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Thursday
October 7, 1999

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

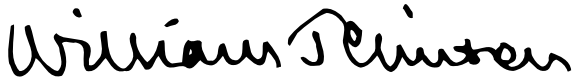
Presidential Determination No. 99–42 of September 29, 1999

Use of $18.1 Million in Unallocated Nonproliferation, Anti-Terrorism, Demining and Related Programs Funds for a U.S. Contribution to the Korean Peninsula Energy Development Organization (KEDO)

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 614(a)(1) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2364(a)(1) (the ''Act''), I hereby determine that it is important to the security interests of the United States to furnish up to $18.1 million in funds made available under the heading ''Nonproliferation, Anti-Terrorism, Demining and Related Programs'' in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Public Law 105–277, for assistance for KEDO without regard to any provision of law within the scope of section 614(a)(1). I hereby authorize the furnishing of this assistance.

Your are hereby authorized and directed to transmit this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 29, 1999.

[FR Doc. 99–26266
Filed 10–6–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 99–43 of September 30, 1999

Drawdown Under Section 506(a)(2) of the Foreign Assistance Act To Provide Counter-Drug Assistance to Colombia, Peru, Ecuador, and Panama

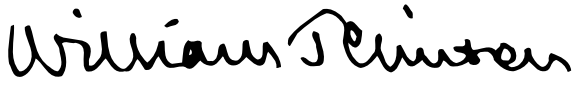
Memorandum for the Secretary of State[,] the Secretary of the Treasury[,] the Secretary of Defense[,] the Attorney General[, and] the Secretary of Transportation

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the ''Act''), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, military education and training from the Department of Defense, and articles and services from the inventory and resources of the Departments of Justice, State, Transportation, and the Treasury for the purpose of providing international anti-narcotics assistance to Colombia, Peru, Ecuador, and Panama.

Therefore, I direct the drawdown of up to $72.55 million of articles and services from the inventory and resources of the Departments of Defense, Transportation, Justice, State, and the Treasury, and military education and training from the Department of Defense, for Colombia, Peru, Ecuador, and Panama for the purposes and under the authorities of chapter 8 of part I of the Act.

As a matter of policy and consistent with past practice, my Administration will seek to ensure that the assistance furnished under this drawdown is not provided to any unit of any foreign country's security forces if that unit is credibly alleged to have committed gross violations of human rights unless the government of such country is taking effective measures to bring the responsible members of that unit to justice.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 1999.

[FR Doc. 99–26267
Filed 10–6–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

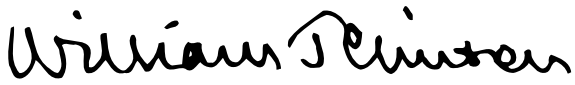
Presidential Determination No. 99–44 of September 30, 1999

Pakistan and India

Memorandum for the Secretary of State[, and] the Secretary of Agriculture

Pursuant to the authority vested in me as President of the United States, including under section 902 of the India-Pakistan Relief Act of 1998 (as enacted in Public Law 105–277), to the extent provided in that section, I hereby waive until October 21, 1999, the sanctions and prohibitions contained in sections 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4) of the Export-Import Bank Act of 1945, insofar as such sanctions and prohibitions would otherwise apply to any credit, credit guarantee, or financial assistance provided by the Department of Agriculture to support the purchase of food or other agricultural commodity.

The Secretary of State is hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 1999.

[FR Doc. 99–26268
Filed 10–6–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 99–45 of September 30, 1999

Presidential Determination on FY 2000 Refugee Admissions Numbers and Authorizations of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act, and Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act, as Amended

Memorandum for the Secretary of State

In accordance with section 207 of the Immigration and Nationality Act (the ''Act'') (8 U.S.C. 1157), as amended, and after appropriate consultation with the Congress, I hereby make the following determinations and authorize the following actions:

The admission of up to 90,000 refugees to the United States during FY 2000 is justified by humanitarian concerns or is otherwise in the national interest; provided, however, that this number shall be understood as including persons admitted to the United States during FY 2000 with Federal refugee resettlement assistance under the Amerasian immigrant admissions program, as provided below.

The 90,000 admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided, however, that the number allocated to the East Asia region shall include persons admitted to the United States during FY 2000 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100–202 (Amerasian immigrants and their family members); provided further that the number allocated to the former Soviet Union shall include persons admitted who were nationals of the former Soviet Union, or in the case of persons having no nationality, who were habitual residents of the former Soviet Union, prior to September 2, 1991:

Africa	18,000
East Asia	8,000
Former Yugoslavia	17,000
Kosovo Crisis	10,000
NIS/Baltics	20,000
Latin America/Caribbean	3,000
Near East/South Asia	8,000
Unallocated	6,000

The 6,000 unallocated numbers shall be allocated as needed to regional ceilings where shortfalls develop. Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. You are hereby authorized and directed to consult with the Judiciary Committees of the Congress prior to any such use of the unallocated numbers or reallocation of numbers from one region to another.

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby determine that assistance

to or on behalf of persons applying for admission to the United States as part of the overseas refugee admissions program will contribute to the foreign policy interests of the United States and designate such persons for this purpose.

An additional 10,000 refugee admissions numbers shall be made available during FY 2000 for the adjustment to permanent resident status under section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) of aliens who have been granted asylum in the United States under section 208 of the Act (8 U.S.C. 1158), as this is justified by humanitarian concerns or is otherwise in the national interest.

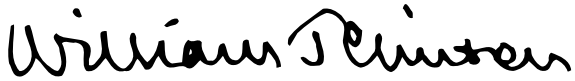
In accordance with section 101(a)(42) of the Act (8 U.S.C. 1101(a)(42)) and after appropriate consultation with the Congress, I also specify that, for FY 2000, the following persons may, if otherwise qualified, be considered refugees for the purpose of admission to the United States within their countries of nationality or habitual residence:

a. Persons in Vietnam

b. Persons in Cuba

c. Persons in the former Soviet Union

You are authorized and directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 30, 1999.

[FR Doc. 99–26269
Filed 10–6–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register

Vol. 64, No. 194

Thursday, October 7, 1999

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended by the Veterans Programs Enhancement Act of 1998. The purpose of the amendment is to provide guidance to the parties to MSPB cases, and their representatives, on how to proceed in cases raising claims that an agency employer or the Office of Personnel Management (OPM) has not complied with a USERRA provision governing the employment and reemployment rights to which a person is entitled after service in the uniformed services.

EFFECTIVE DATE: October 7, 1999.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: On December 22, 1997, the Board issued an interim rule to implement provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Public Law 103–353 (62 FR 66813). The interim rule requested public comments and allowed 60 days, until February 20, 1998, for submission of comments.

Comments were received from two Federal agencies, both of which have significant responsibilities under USERRA. The Office of Personnel Management supported the interim rule, as published, citing in particular its support for the establishment of time limits for filing a USERRA appeal with MSPB. (The Preamble to the interim rule explained that the Board is authorized by 5 U.S.C. 1204(h) to promulgate regulations to carry out its functions, that the Board has used this authority since its inception to prescribe time limits for filing appeals with the Board, and that the Board is also authorized by 38 U.S.C. 4331(b)(2)(A) to promulgate regulations to carry out its functions under USERRA.) The OPM comments noted that the establishment of time limits would avoid matters becoming stale, while adequately safeguarding the procedural rights of Federal employees.

The Department of Labor, on the other hand, objected to the establishment of time limits for filing USERRA appeals. In support of its position, the Department cited the broad remedial purpose of USERRA and the stated intent of Congress that Federal employees be provided protections comparable to those afforded employees of State and private employers. The Department pointed out the specific prohibition on application of any State statute of limitations to claims brought against State or private employers (38 U.S.C. 4323(c)(6), now 38 U.S.C. 4323(i) as amended by the Veterans Programs Enhancement Act of 1998). The Department argued that, rather than imposing time limits on the filing of USERRA claims, the Board should apply the equitable doctrine of *laches* to claims brought by Federal employees.

While the Board was evaluating these comments, the House of Representatives passed H.R. 3213, the USERRA Amendments Act of 1998. This bill included a provision (section 4) that would require the Board to adjudicate any USERRA claim filed on or after October 13, 1994 (the enactment date of USERRA) ''without regard as to whether the complaint accrued before, on, or after October 13, 1994.'' Subsequently, both the House and Senate passed H.R. 4110, the Veterans Programs Enhancement Act of 1998, which incorporated the language of section 4 of H.R. 3213 as section 213. (The other provisions of H.R. 3213 became sections 211 and 212 of H.R. 4110.) The President signed H.R. 4110 on November 11, 1998, Public Law 105–368. Under this amendment to USERRA, the time limits in the Board's interim rule clearly could not be applied to USERRA complaints that accrued prior to October 13, 1994.

In view of both the 1998 USERRA amendments and the comments on the interim rule submitted by the Department of Labor, the Board undertook an extensive review of the history of veterans reemployment rights law. From this review, the Board has concluded that it would be inconsistent with the intent of Congress for the Board to exercise its regulatory authority to establish a time limitation on the filing of claims by Federal employees under USERRA.

The prohibition on State statutes of limitation in USERRA is carried over from an earlier law, the 1974 Vietnam Era Veterans Readjustment Assistance Act. Section 404 of that law, which created Chapter 43 of Title 38, is commonly referred to as the Veterans Reemployment Rights Act (VRR Act). The legislative history makes clear Congress' preference for the application of *laches* in VRR cases. The Senate Report, S. Rep. No. 907, 93d Cong., 2d Sess. at 111 (1974) (emphasis added) states:

> There is also added a provision at the end of this section which reaffirms and reflects more clearly the *congressional intent that legal proceedings under this chapter shall be governed by equity principles of law*, specifically by barring the application of State statutes of limitations to any such proceeding.
>
> Congress, in 1940, omitted any reference to the application of a time-barred defense in cases arising under this law, in part to insure the application of a policy of keeping enforcement rights available to returned veterans as uniform as possible throughout the country. *The equity doctrine of laches accomplishes the purpose as nearly as possible.*
>
> Therefore, those court decisions which have either applied a State statute of limitations to completely bar a claim under the prior law (see e.g. *Blair* v. *Paige Aircraft Maintenance, Inc.*, 467 F.2d 815 (1972) (Alabama 1-year statute of limitations); *Bell* v. *Aerodex, Inc.*, 473 F.2d 869 (5th Cir. 1973) (Florida 1-year statute of limitations) or have applied a State statute of limitations to partially bar a claim under the prior law (see e.g. *Gruca* v. *United States Steel Corp.*, (No. 73–1803 3d Cir. decided April 17, 1974); *Smith* v. *Continental Airlines, Inc.*, 70 CCH Labor Cases 13,501 (C.I.), Calif. 1973) are not in accord with the intent of Congress as to the application of time-barred defenses.

Congress did not include either in the 1974 law or in USERRA in 1994 an explicit prohibition on the application

of a Federal time limitation to veterans reemployment rights claims brought by Federal employees. Congress' silence regarding applying Federal statutes of limitation to veterans reemployment cases, however, is not necessarily determinative. In *Wallace* v. *Hardee's of Oxford*, 874 F. Supp. 374, 376 (M.D. Ala. 1995), the court rejected Hardee's argument that if Congress intended to preempt use of Federal statutes of limitation it would not have barred only State statutes of limitation. The court noted that ''the Act's silence can be explained on the basis that Congress enacted the bar on State statutes of limitations specifically to overrule case law on that issue.'' *Id.* ''Because, to the court's knowledge, there was no case law borrowing from Federal statutes of limitations in the veterans' reemployment area, there would have been no reason for Congress to enact a statute on that subject. In this situation, Congress's silence on borrowing from Federal statutes of limitation cannot be determinative.'' *Wallace*, 874 F. Supp. at 376.

Other courts considering time limits in veterans reemployment matters have applied *laches*. In *Farries* v. *Stanadyne/Chicago Div.*, 832 F.2d 374, 379–80 (7th Cir. 1987), the court applied *laches* to a VRR Act claim, relying on the Senate Report language cited above indicating that legal proceedings under the Act are to be governed by equitable principles, including the doctrine of *laches*. In *Stevens* v. *Tennessee Valley Authority*, 712 F.2d 1047, 1056–57 (6th Cir. 1983), the court applied *laches* to a veterans reemployment rights matter (cited with approval in the USERRA legislative history, H.R. Rep. No. 65, 103rd Cong., 1st Sess. at 39 (1993)). In *Goodman* v. *McDonnell-Douglas Corp.*, 606 F.2d 800, 805 (8th Cir. 1979), cert. denied, 446 U.S. 913 (1980), the court applied *laches* in a VRR Act case, concluding that analogous statutes of limitation are only one element in determining ''whether the length of delay was unreasonable and whether the potential for prejudice was great.'' The court found that this approach is consistent with the purpose of the doctrine of *laches* and congressional intent to protect veterans' reemployment rights. *Id.*

USERRA broadened both the substantive and procedural rights of veterans. The legislative history does not distinguish between those rights in noting a congressional intent to construe the Act broadly but directs that the Act be treated as ''an organic whole.'' The House Report at 19 states:

> * * * the extensive body of case law that has evolved over (the fifty years of legislation regarding veterans employment and reemployment rights), to the extent that it is consistent with the provisions of this Act, remains in full force and effect in interpreting these provisions. This is particularly true of the basic principle established by the Supreme Court that the Act is to be ''liberally construed.''

The House Report cites two Supreme Court cases for its principle of liberal construction. *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), interprets the provision of the Selective Service Act requiring that, upon return from military service, an employee is to be restored without loss of seniority. Noting that the Act is to be liberally construed, the Court stated that it must ''*construe the separate provisions of the Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits.*'' *Id.* at 285 (emphasis added). In *Alabama Power Co.* v. *Davis*, 431 U.S. 585 (1977), the Court, citing *Fishgold*, held that the Military Selective Service Act should be construed broadly to enable an employee to accumulate pension benefits while on military duty, as long as there is ''reasonable certainty'' that he would have accumulated those benefits had he stayed at his job. *Id.* at 591–92.

Given the broad remedial purpose of USERRA, the mandate for its liberal construction, the stated intent of Congress that Federal employees be provided protections comparable to those afforded employees of State and private employers, the stated intent of Congress that the Federal Government serve as a model employer, the 1998 amendment extending the Board's jurisdiction to complaints that accrued prior to the USERRA effective date, and the legislative history and judicial construction of veterans' reemployment rights law reviewed above, the Board has concluded that application of a time limitation to Federal employees' USERRA claims would be inconsistent with congressional intent.

The Board in this final rule is revising 5 CFR 1201.22(b)(2) to remove the time limits for filing USERRA appeals and to state instead that the time limit set forth in § 1201.22(b)(1)—which applies to MSPB appeals generally—shall not apply to appeals alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services. No other changes are made to the interim rule.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h) and 38 U.S.C. 4331.

Accordingly, the Board adopts its interim rule published on December 22, 1997 (62 FR 66813), as final, with the following change:

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

2. Section 1201.22(b)(2) is revised to read as follows:

§ 1201.22 [Amended]

(b) * * *

(2) The time limit in paragraph (b)(1) of this section shall not apply to an appeal alleging non-compliance with the provisions of chapter 43 of title 38 of the United States Code relating to the employment or reemployment rights or benefits to which a person is entitled after service in the uniformed services (see paragraph (a)(22) of § 1201.3 of this part).

Dated: September 28, 1999.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 99–26102 Filed 10–6–99; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 735

RIN 0560–AE60

Amendments to the Regulations for Cotton Warehouses—Electronic Warehouse Receipts, and Other Provisions

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule adopts, with minor changes, a proposed rule that was published in the November 2, 1996, **Federal Register** (61 FR 60637) regarding cotton warehouses that are operating under the United States Warehouse Act (USWA). This rule makes a number of clarifying and technical changes to existing warehouse regulations, but also removes the requirement that all electronic warehouse receipts for cotton must be issued as single bale receipts. The rule will thereby allow warehouse operators to issue single and multiple bale warehouse receipts as either paper or electronic warehouse receipts. Portions of the proposed rule were already adopted in a final rule that was

published in the June 20, 1997, **Federal Register** (62 FR 33539).

EFFECTIVE DATE: October 7, 1999.

FOR FURTHER INFORMATION CONTACT: Steve Mikkelsen, Deputy Director, Warehouse and Inventory Division, Farm Service Agency, STOP 0553, 1400 Independence Avenue, SW, Washington, DC, 20250–0553; telephone 202–720–2121 or FAX 202–690–3123, e-mail: Steve__Mikkelsen@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this final rule and determined the rule to be significant for the purposes of Executive Order 12866. A Cost-Benefit Assessment (CBA) was prepared. The CBA summarized the cost and benefit impact of this final rule as follows:

The costs associated with the implementation of the final rule will be minimal to all parties involved.

This final rule will benefit warehouse operators because it allows for the issuance of a single electronic cotton warehouse receipt for more than one bale of cotton. Presently, the regulations require warehouse operators who elect to use electronic warehouse receipts to issue receipts in a single-bale format.

Warehouse operators who elect to continue to issue single-bale electronic warehouse receipts or to issue multiple bale receipts as paper receipts can continue to do so under these regulations, and thus will be unaffected by this final rule.

The Cost-Benefit Assessment is available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12612

It has been determined that this rule is consistent with the Federalism principles espoused in Executive Order 12612, and does not warrant the preparation of a Federalism Assessment.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

The amendments set forth in this final rule do not generate any new or revised information collection or record keeping requirements on the public. The existing information collections were previously cleared by OMB and assigned OMB control number 0560–0120.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule, because it has been determined that this rule will not have a significant effect on a substantial number of small businesses. The decision to request a license under the USWA is a voluntary decision made by the warehouse operator.

Background

The USWA, as amended (7 U.S.C. 241 *et seq.*) provides the Secretary of Agriculture the authority to license public warehouse operators that store cotton. As part of this licensing authority, the Secretary regulates the issuance of warehouse receipts by the cotton warehouse operators it licenses (7 U.S.C. 260). The USWA was amended in 1990 and 1992, and regulations were issued on March 31, 1994, (59 FR 15033), to permit warehouse operators to issue electronic warehouse receipts for cotton. Currently, the regulations require that all electronic warehouse receipts issued by warehouse operators must be single bale receipts. Some warehouse operators have requested permission to issue electronic warehouse receipts for cotton using a multiple bale format to accommodate differences in the manner cotton is handled throughout the United States.

This final rule (l) modifies the method to identify and weigh each bale of cotton in a multiple bale lot, while still requiring an identification for each bale and lot, (2) deletes obsolete provisions regarding the issuance and printing of warehouse receipts; (3) removes masculine pronouns; (4) removes the requirement that all multiple bale receipts must represent between 25 and 200 bales of cotton, and as amended allows for the storage and tagging of such bales to be conducted as efficiency dictates; (5) clarifies the section relating to the system of accounts; (6) modifies the means by which a warehouse operator may notify the Administrator in the event of a fire; (7) clarifies the contents of complaints; (8) removes the requirement that all electronic cotton warehouse receipts must be issued as single bale receipts, and as amended specifically allows for the issuance of multiple bale electronic receipts; and (9) makes other clarifications and nomenclature changes.

Summary of Comments

A proposed rule was published in the **Federal Register** (61 FR 60637) on November 29, 1996, to change the regulations governing cotton warehouses.

Comments on the proposed rule were received from two cotton associations, one bank, one U.S. Department of Agriculture employee, one electronic warehouse receipt provider, one merchant, and four warehouse operators. All of the comments related to the use of electronic receipts for multiple bale lots.

In general comments supported the issuance of multiple bale warehouse receipts in electronic format, however, five comments indicated that multiple bale warehouse receipts should not be required to contain individual bale tags and weights. These comments indicated that individual bale tags and weights for each bale included on a multiple bale receipt should be kept on file at the warehouse, and should not be part of the multiple bale warehouse receipt data forwarded to the central filing system.

One commenter indicated they would like to have for each warehouse the number of multiple bale receipts, number of bales covered by each multiple bale warehouse receipt, and the receipt number for each electronic receipt. This commenter went on to indicate that this information should enable interested parties to obtain a tag list of the bales covered by each

multiple bale warehouse receipt from the issuing warehouse for identification purposes.

Four comments indicated that tag numbers and individual bale weights should be part of each multiple bale warehouse receipt because requiring such information would provide proper identification and preserve the information for each multiple bale lot of cotton stored under a multiple bale warehouse receipt. Three comments expressed no opinion on this issue.

The commenters that suggested bale tag numbers and individual bale weights should not be included on the warehouse receipt indicated they could contact the warehouse and obtain the information via another method. However, none of the commenters addressed the issue as to why this information, which is needed for normal commerce, should not also be required on the electronic warehouse receipt.

The Department has reviewed these comments and has determined that section 18(f) of the USWA (7 U.S.C. 260) requires each warehouse receipt issued to contain the following: ''* * * a description of such bales or packages by marks, numbers, or other means of identification and the weight of such bales or packages, * * *'' Accordingly, the governing statute requires that this information be included on all receipts, including multiple bale receipts. Therefore, comments to the contrary were not adopted.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, the provisions of 7 CFR part 735 are amended as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for part 735 continues to read as follows:

Authority: 7 U.S.C. 241 *et seq.*

2. Section 735.16 is amended by revising paragraphs (a)(5), (a)(9), (b), and (e) to read as follows:

§ 735.16 Form.

(a) * * *

(5) The tag identifier given to each bale of cotton in accordance with § 735.31;

* * * * *

(9) A statement indicating that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted in § 735.38, the receipt shall contain a statement to that effect.

(b) Except when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: *Provided,* that nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when the accrued storage and other charges approach the current market value of the cotton.

* * * * *

(e) If, at the request of the depositor, a warehouseman issues a receipt omitting the statement of grade and/or weight, such receipt shall have clearly and conspicuously stamped or written on the face thereof, or included as part of the electronic warehouse receipt record, either one or both of the following: ''Not graded on request of the depositor'' or ''Not weighed on request of the depositor,'' as applicable.

* * * * *

3. Section 735.19 is revised to read as follows:

§ 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is:

(a) In a form prescribed by the Administrator;

(b) Upon distinctive paper or card stock specified by the Administrator;

(c) Printed by a printer with whom the United States has a subsisting agreement and bond for such printing; and

(d) On paper and/or card stock tinted with ink in the manner prescribed by the agreement under paragraph (c) of this section.

4. Section 735.21 is revised to read as follows:

§ 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which a negotiable receipt has been issued under the Act until such receipt has been returned and canceled; and shall not deliver cotton for which a non-negotiable receipt has been issued until such receipt has been returned or until the warehouseman has obtained from the person lawfully entitled to such delivery or their authorized agent, a written delivery order that is properly signed, specifying by bale or tag number, mark, or identifier each bale to be delivered from any receipt or receipts. * * *

5. Section 735.31 is revised to read as follows:

§ 735.31 Tags to be attached to bales.

Except as provided in § 735.32, each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto an identification tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Administrator. These tags will contain a number, mark, or identifier and shall be attached in an orderly systematic sequence, clearly distinguishable from each other.

6. Section 735.32 is amended by revising paragraphs (b) and the first two sentences of (c) to read as follows:

§ 735.32 Arrangement of stored cotton.

* * * * *

(b) If cotton is tendered to a licensed warehouseman for storage and the cotton is of the same grade and staple and is tendered in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in a lot or lots without regard to visibility of all tags on all bales within any lot, the warehouseman may store such cotton if each lot originally contained two or more bales: *Provided, however,* that each bale entering into a lot must bear an individual bale identification, and must be stored so that the number of bales within the lot may be accurately determined.

(c) An individual lot identification tag showing the lot number and the number of bales in the lot shall be affixed by the warehouseman to each lot of cotton. The warehouseman shall also maintain an office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse. * * *

7. Section 735.33 is revised to read as follows:

§ 735.33 System of accounts.

Each warehouseman shall use a system of accounts which is approved by the Service. The system of accounts shall show the following for each bale of cotton: the tag number, mark, or identifier as specified in § 735.31; its weight; its class when required or

ascertained; its location; the dates received for, and delivered out of, storage; and the receipts issued and canceled. All systems of accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies.

8. Section 735.38 is amended by revising paragraph (a) to read as follows:

§ 735.38 Weighing of cotton; weighing apparatus.

(a) Before being stored in a licensed warehouse, all cotton shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight. Lot cotton tendered for storage on which a multiple bale warehouse receipt is issued must be maintained so as to preserve its individual and collective identity during storage and shipment, provided that if such lot is broken at the warehouse, for the issuance of new receipts, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

* * * * *

9. Section 735.40 is amended by revising paragraph (b) (3) to read as follows:

§ 735.40 Excess storage.

* * * * *

(b) * * *

(3) The shipping warehouseman must transfer all identity-preserved cotton in lots and must list on a Bill of Lading all forwarded bales by receipt number and weight. The receiving warehouseman shall promptly issue a non-negotiable warehouse receipt for each lot of cotton stored and shall attach a copy of the corresponding Bill of Lading to each receipt and return the receipt promptly to the shipping warehouseman. The receiving warehouseman will store each such lot intact, and will attach a header card to the lot showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers to the stored lot. Such non-negotiable warehouse receipts issued for forwarded cotton shall have printed or stamped diagonally in large bold outline letters across the face of the receipt the words: ''NOT NEGOTIABLE.''

* * * * *

10. Section 735.44 is revised to read as follows:

§ 735.44 Fire loss to be reported.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

11. Section 735.47 is revised to read as follows:

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. All certificates and supporting documentation that form the basis for any receipt issued by the warehouseman shall be retained in the records of the warehouseman for a period of 1 year after December 31 of the year in which the receipt based on such certificates or supporting documentation is canceled.

12. Section 735.49 is revised to read as follows:

§ 735.49 Methods for drawing and marking samples.

Each sample shall be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn and the date of sampling.

13. Section 735.77 is revised to read as follows:

§ 735.77 Contents of complaint.

(a) Complaints shall be in English and shall state:

(1) The name and post office address of the complainant;

(2) The nature of the complainant's interest in the cotton;

(3) The name and post office address of the holder of the receipt, if someone other than the complainant;

(4) The name and post office address of any other interested party;

(5) The name and location of the licensed warehouse in which the cotton is stored, and the tag number, mark, or identifier assigned to each bale of cotton involved in the appeal, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor;

(6) The grade or other class assigned by the licensed classifier, if any;

(7) The grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party;

(8) Whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal; and

(9) If samples have been agreed upon and submitted in accordance with § 735.79(b).

(b) When practicable, the complainant shall file with the complaint, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed before the issuance of the cotton appeal certificate, a definite statement indicating why such papers are not produced shall be filed with the complaint.

14. Section 735.101 is amended by removing paragraph (b) and redesignating paragraphs (c) through (p) as paragraphs (b) through (o).

15. Section 735.102 is amended by revising paragraphs (d) (4), and (f) to read as follows:

§ 735.102 Provider requirements and standards for applicants.

* * * * *

(d) * * *

(4) The provider or the Service may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

* * * * *

(f) *Application form*. Application for a provider agreement shall be made to the Secretary on forms prescribed and furnished by the Service.

Signed at Washington, DC, on October 1, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–26167 Filed 10–6–99; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Part 602

RIN 3052–AB84

Releasing Information; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule; effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 602 on August 2, 1999 (64 FR 41770). The final rule amends FCA regulations on the release of information under the Freedom of Information Act (FOIA) to: Reflect new fees and make it easier for the public to get FCA records; revise the procedures for requests for testimony by FCA employees on official matters and for producing FCA documents in litigation

when FCA is not a named party; and add procedures for getting records in public rulemaking files. We designed this regulation to be concise and easy to understand. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 6, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR part 602 published on August 2, 1999 (64 FR 41770) is effective October 6, 1999.

FOR FURTHER INFORMATION CONTACT:
John Hays, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,
or
Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: September 30, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–26105 Filed 10–6–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–15–AD; Amendment 39–11348; AD 99–21–05]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 77–25–03, which currently requires repetitively inspecting for cracks on the landing gear actuator rod ends that are equipped with grease fittings, on Fairchild Aircraft, Inc. (Fairchild Aircraft) Models SA226–T, SA226–AT, and SA226–TC airplanes. AD 77–25–03 also requires replacing the landing gear actuator rod ends with an improved part either immediately or at a certain time period depending on the results of the inspections. Replacement of all six rod ends terminates the repetitive inspection requirements of AD 77–25–03. This AD is the result of failures of the landing gear rod ends on airplanes where the rod ends were replaced in accordance with AD 77–25–03. Fairchild has re-designed the landing gear rod ends as a result of these failures. This AD requires replacing all landing gear rod ends with these improved design parts on all SA226 series airplanes, including those manufactured since AD 77–25–03 was issued (*i.e.*, the Model SA226–T(B) airplanes). The actions specified by this AD are intended to prevent failure of the landing gear actuator caused by cracks in the rod ends, which could result in the inability to lower the landing gear during a landing with consequent possible loss of control of the airplane.

DATES: Effective November 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 16, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Hung Viet Nguyen, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5155; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

AD 77–25–03, Amendment 39–3090, currently requires repetitively inspecting for cracks on the landing gear actuator rod ends that are equipped with grease fittings, on Fairchild Aircraft Models SA226–T, SA226–AT, and SA226–TC airplanes; and replacing the landing gear actuator rod ends.

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild Aircraft Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC airplanes that are equipped with any landing gear actuator rod end other than part number (P/N) VTA00350 (or FAA-approved equivalent part number) was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 11, 1999 (64 FR 25218). The NPRM proposed to supersede AD 77–25–03 with a new AD that would require replacing all landing gear rod ends with improved design parts, P/N VTA00350 (or FAA-approved equivalent part number). Accomplishment of the proposed replacements as specified in the NPRM would be required in accordance with Fairchild Aircraft Service Bulletin SB A32–014, Revised: January 26, 1999.

The NPRM was the result of failures of the landing gear rod ends on airplanes where the rod ends were replaced in accordance with AD 77–25–03. Fairchild has re-designed the landing gear rod ends as a result of these failures.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 190 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the replacements, and that the average labor rate is approximately $60 an hour. Parts cost approximately $169 per rod (6 rods per airplane). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $261,060, or $1,374 per airplane.

These figures are based upon the presumption that no affected airplane owner/operator has accomplished the replacement.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 77–25–03, Amendment 39–3090, and by adding a new AD to read as follows:

99–21–05 Fairchild Aircraft, Inc.: Amendment 39–11348; Docket No. 99–CE–15–AD; Supersedes AD 77–25–03, Amendment 39–3090.

Applicability: The following airplanes models and serial numbers, certificated in any category; that are equipped with any landing gear actuator rod end other than part number (P/N) VTA00350 (or FAA-approved equivalent part number).

Model	Serial No.
SA226–T	T201 through T275 and T277 through T291.
SA226–T(B)	T(B) 276 and T(B) 292 through T(B)417.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC396, TC398 through TC413, and TC418 through TC419.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the landing gear actuator caused by cracks in the rod ends, which could result in the inability to lower the landing gear during a landing with consequent possible loss of control of the airplane, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, replace any landing gear actuator rod end that is not P/N VTA00350 (or FAA-approved equivalent part number) with one that incorporates this part number. Accomplish this replacement in accordance with Fairchild Aircraft Alert Service Bulletin SB A32–014, Revised: January 26, 1999.

(b) As of the effective date of this AD, no person may install, on any affected airplane, any landing gear actuator rod end that is other than P/N VTA00350 (or FAA-approved equivalent part number).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

(2) Alternative methods of compliance approved in accordance with AD 77–25–03 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) The replacements required by this AD shall be done in accordance with Fairchild Aircraft Alert Service Bulletin SB A32–014, Revised: January 26, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment supersedes AD 77–25–03, Amendment 39–3090.

(g) This amendment becomes effective on November 16, 1999.

Issued in Kansas City, Missouri, on September 27, 1999.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25745 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–367–AD; Amendment 39–11353; AD 99–21–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and –100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727–100 and –100C series airplanes, that requires replacement of certain skin panels of the lower fuselage with non-bonded skin panels. This amendment is prompted by reports of corrosion of the skin panels of the lower fuselage on airplanes with hot-bonded doublers. The actions specified by this AD are intended to prevent degradation of the structural integrity of certain skin panels of the lower fuselage, which could result in loss of airplane pressurization.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and –100C series airplanes was published in the **Federal Register** on July 21, 1999 (64 FR 39102). That action proposed to require replacement of certain skin panels of the lower fuselage with non-bonded skin panels.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters indicate they are not affected by the proposed rule. One commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 67 airplanes of the affected design in the worldwide fleet. Based on a records review, the FAA estimates that only 38 of those airplanes are still in service. The FAA estimates that 23 airplanes of U.S. registry still in service will be affected by this AD, that it will take approximately 1,216 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $12,993 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $1,976,919, or $85,953 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–21–10 Boeing: Amendment 39–11353. Docket 98–NM–367–AD.

Applicability: Model 727–100 and –100C series airplanes; line numbers 126, 130, 146, 153, 221, 287, 331, 339, 345, 355, 416, 516, 532, 540, 551, 555, 559, 575, 592, 594, 596, 599, 600, 604, 605, 615, 619, 625, 626, 628, 630, 631, 632, 635, 640, 641, 643, 645, 647, 658, 660, 686, 695, 700, 711, 712, 735, 748, 766, 768, 784, 797, 803, 806, 810, 812, 817, 821, 822, 824, 829, 854, 856, 857, 858, 861, and 869; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural integrity of certain skin panels of the lower fuselage, which could result in loss of airplane pressurization, accomplish the following:

(a) Within 20 years since original installation, or within 4 years after the effective date of this AD, whichever occurs later, replace the skin panels of the lower fuselage between body station (BS) 950 and BS 1183 with non-bonded skin panels, in accordance with Part VI of the Accomplishment Instructions of Boeing Service Bulletin 727–53–0085, Revision 4, dated July 11, 1991.

Note 2: Accomplishment of the modification specified in Boeing Service Bulletin 727–53–0085, Revision 2, dated July 3, 1975, or Revision 3, dated September 28, 1989, is acceptable for compliance with the replacement required by paragraph (a) of this AD.

Note 3: Accomplishment of the modification specified in paragraph (a) of this AD constitutes terminating action for the inspection requirements of AD 92–19–10, amendment 39–8368 (57 FR 47404, October 16, 1992) for those panels.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Boeing Service Bulletin 727–53–0085, Revision 4, dated July 11, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a)

and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25767 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–268–AD; Amendment 39–11350; AD 99–21–07]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9, DC–9–80, and C–9 (Military) Series Airplanes, and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD), applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, that currently require installation of hydraulic line restrictors in the main landing gear (MLG), and modification or replacement of the left and right MLG hydraulic damper assemblies. This amendment requires an additional modification of the MLG hydraulic damper assemblies, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies. This amendment is prompted by reports indicating that MLG hydraulic damper assemblies removed for overhaul had failed or damaged spring retainers, due to insufficient material thickness of the spring retainers. The actions specified by this AD are intended to prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996, listed in the regulations was approved previously by the Director of the Federal Register as of November 14, 1996 (61 FR 53042, October 10, 1996).

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of February 26, 1996 (61 FR 2407, January 26, 1996).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–01–09, amendment 39–9485 (61 FR 2407, January 26, 1996), and AD 96–21–01, amendment 39–9777 (61 FR 53042, October 10, 1996), which are applicable to certain McDonnell Douglas Model DC–9, DC–9–80, and C–9 (military) series airplanes, and Model MD–88 airplanes, was published in the **Federal Register** on July 23, 1999 (64 FR 39944). The action proposed to require an additional modification of the main landing gear (MLG) hydraulic damper assemblies, or replacement of the MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 2,015 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,145 airplanes of U.S. registry will be affected by this AD.

The installation that is currently required by AD 96–01–09, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $928 per airplane. Based on these figures, the cost impact of the currently required installation on U.S. operators is estimated to be $1,168 per airplane.

The modification that is currently required by AD 96–01–09, and retained in this AD, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $4,000 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $4,360 per airplane.

The replacement that is currently required by AD 96–21–01, and retained in this AD, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $11,139 per airplane (two assemblies at $5,569 each). Based on these figures, the cost impact of the currently required replacement on U.S. operators is estimated to be $11,499 per airplane.

The modification that is currently required by AD 96–21–01, and retained in this AD, takes approximately 11 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $2,907 per airplane. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $3,567 per airplane.

The modification or replacement that is required in this AD action will take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $608 per airplane. Based on these figures, the cost impact of the modification required by this AD on

U.S. operators is estimated to be $1,932,760, or $1,688 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9485 (61 FR 2407, January 26, 1996), and amendment 39–9777 (61 FR 53042, October 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–11350, to read as follows:

99–21–07 McDonnell Douglas: Amendment 39–11350. Docket 98–NM–268–AD. Supersedes AD 96–01–09, Amendment 39–9485; and AD 96–21–01, Amendment 39–9777.

Applicability: Model DC–9–81 (MD–81), –82 (MD–82), –83 (MD–83), and 87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas Service Bulletins MD80–32–276 and MD80–32–278, both dated March 31, 1995; and Model DC–9–10, –20, –30, –40, and –50; and C–9 (military) series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hydraulic damper assemblies of the MLG, which could result in vibration damage and collapse of the MLG, accomplish the following:

Restatement of Requirements of AD 96–01–09

Modifications

(a) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, that have not been previously modified (installation of brake line restrictors) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–246: Within 9 months after February 26, 1996 (the effective date of AD 96–01–09, amendment 39–9485), install filtered brake line restrictors in the MLG hydraulic brake system in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, or Revision 1, dated October 17, 1995.

Note 2: Installation of filtered restrictors in accordance with the instructions specified in McDonnell Douglas MD–80 Alert Service Bulletin, MD80–A32–286, dated September 11, 1995, is considered acceptable for compliance with paragraph (a) of this AD.

(b) For airplanes listed in McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995: Within 36 months after February 26, 1996, modify the hydraulic damper assembly (by removing shims, increasing bolt torque, and incorporating changes to increase the volume of fluid passing between the two damper chambers) in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995, or Revision 1, dated September 6, 1995.

Restatement of Requirements of AD 96–21–01

Replacement or Modification

(c) For airplanes listed in McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996: Within 24 months after November 14, 1996 (the effective date of AD 96–21–01, amendment 39–9777), either replace or modify the MLG hydraulic damper assembly, in accordance with the procedures specified as either ''Option 1'' or ''Option 2,'' respectively, of the service bulletin.

New Requirements of this Ad

Replacement or Modification

(d) For McDonnell Douglas Model DC–9 series airplanes, and C–9 (military) series airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 18 months after the effective date of this AD, accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(1) Modify the left and right MLG hydraulic damper assemblies.

(2) Replace the left and right MLG hydraulic damper assemblies with modified and reidentified hydraulic damper assemblies having part number (P/N) SR09320057–7005, SR09320057–7007, SR09320057–7009, or 5923142–5513.

(e) For McDonnell Douglas Model DC–9–80 series airplanes, and MD–88 airplanes (as listed in McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01): Within 3,000 flight cycles after incorporation of the latest configuration of the left and right MLG hydraulic damper assemblies, or within 9 months after the effective date of this AD, whichever occurs later; accomplish the requirements specified in either paragraph (d)(1) or (d)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998, or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 01, dated March 8, 1999.

(f) Paragraph (b) or (c) of this AD, as applicable, must be accomplished prior to or concurrent with the accomplishment of either paragraph (d) or (e) of this AD, as applicable.

Spares

(g) As of the effective date of this AD, no person shall install on any airplane a damper sub assembly having P/N SR09320057–9, SR09320057–17, or 5923142–5017; or a damper assembly having P/N SR09320057–7001, SR09320057–7003, or 5923142–5511, unless the part has been modified and reidentified in accordance with paragraph (d)(2) of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los

Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) The actions shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995; McDonnell Douglas MD–80 Service Bulletin MD80–32–276, Revision 1, dated October 17, 1995; McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995; McDonnell Douglas MD–80 Service Bulletin MD80–32–278, Revision 1, dated September 6, 1995; McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996; McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998; or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 1, dated March 8, 1999; as applicable.

(1) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–32–311, dated July 6, 1998; or McDonnell Douglas Alert Service Bulletin DC9–32A311, Revision 1, dated March 8, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas MD–80 Service Bulletin MD80–32–276, dated March 31, 1995, McDonnell Douglas MD–80 Service Bulletin MD80–32–276, Revision 1, dated October 17, 1995; McDonnell Douglas MD–80 Service Bulletin MD80–32–278, dated March 31, 1995; and McDonnell Douglas MD–80 Service Bulletin MD80–32–278, Revision 1, dated September 6, 1995; was approved previously by the Director of the Federal Register as of February 26, 1996 (61 FR 2407, January 26, 1996).

(3) The incorporation by reference of McDonnell Douglas Service Bulletin DC9–32–289, dated March 7, 1996, was approved previously by the Director of the Federal Register as of November 14, 1996 (61 FR 53042, October 10, 1996).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25766 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–280–AD; Amendment 39–11351; AD 99–21–08]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400A airplanes, that requires replacement of the fuel drain tube assembly in the aft fuselage with a new, modified assembly. This amendment is prompted by a report of chafing of the fuel tube assembly against the elevator control cable due to inadequate clearance between the components. The actions specified by this AD are intended to prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of a fire.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott West, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4146; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A airplanes was published in the **Federal Register** on August 10, 1999 (64 FR 43314). That action proposed to require replacement of the fuel drain tube assembly in the aft fuselage with a new, modified assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 92 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required action, and that the average labor rate is $60 per work hour. Required parts will cost approximately $21 per airplane. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $36,072, or $501 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–21–08 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11351. Docket 98–NM–280–AD.

Applicability: Model 400A airplanes, serial numbers RK–1 through RK–92 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the fuel drain tube assembly, which could result in fuel leakage from the fuel drain tube assembly and consequent risk of fire, accomplish the following:

Replacement

(a) At the next scheduled inspection, but no later than 200 flight hours after the effective date of this AD, replace the existing aft fuselage fuel drain tube assembly, part number (P/N) 128–920151–1, with a new, modified tube assembly, P/N 128–920237–1, in accordance with Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997.

Spares

(b) As of the effective date of this AD, no person shall install a fuel drain tube assembly, P/N 128–920151–1, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Raytheon Aircraft Service Bulletin SB.28–3076, dated October, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25765 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–267–AD; Amendment 39–11349; AD 99–21–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes (MD–81, –82, –83, and –87), and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81, –82, –83, and –87 series airplanes (MD–81, –82, –83, and –87), and Model MD–88 airplanes, that currently requires visual or eddy current inspections to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, and replacement of any cracked brackets. This amendment continues to require repetitive eddy current inspection, adds an inspection requirement, and expands the area of inspection. This amendment also provides terminating action for the repetitive inspections. This amendment is prompted by reports indicating that additional cracking was found outside the original inspection area. The actions specified by this AD are intended to prevent inadvertent slat retraction in flight.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

The incorporation by reference of McDonnell Douglas MD–80 Alert Service Bulletin A27–322, dated August 22, 1991, was approved previously by the Director of the Federal Register as of October 30, 1991 (56 FR 51645, October 15, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los

Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California. or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–21–11, amendment 39–8058 (56 FR 51645, October 15, 1991), which is applicable to all McDonnell Douglas Model DC–9–81, –82, –83, and –87 Series Airplanes (MD–81, –82, –83, and –87), and Model MD–88 airplanes, was published in the **Federal Register** on July 21, 1999 (64 FR 39097). The action proposed to continue to require eddy current inspections to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, and replacement of any cracked brackets. That action also proposed to add an inspection requirement, and expand the area of inspection. That action also proposed to provide terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 787 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 91–21–11 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $141,660, or $180 per airplane, per inspection cycle.

The one-time visual inspection that is required by this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $47,220, or $60 per airplane.

The inspections of the expanded area that are required by this AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $94,440, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required or elect to accomplish the terminating modification that is provided by this AD action, it will take between 130 and 162 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost $22,574 per airplane. Based on these figures, the cost impact of the optional terminating modification, is estimated to be between $30,374 and $32,294 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8058 (56 FR 51645, October 15, 1991), and by adding a new airworthiness directive (AD), amendment 39–11349, to read as follows:

99–21–06 Mcdonnell Douglas: Amendment 39–11349. Docket 98–NM–267–AD. Supersedes AD 91–21–11, Amendment 39–8058.

Applicability: All Model DC–9–81, –82, –83, and –87 series airplanes (MD–81, –82, –83, and –87); and Model MD–88 airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent slat retraction in flight, accomplish the following:

Restatement of Certain Requirements of AD 91–21–11, Amendment 39–8058

(a) Prior to the accumulation of 10,000 total landings or within 30 days after October 30, 1991 (the effective date of AD 91–21–11), whichever occurs later, perform a visual or eddy current inspection to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, part numbers 5938886—(any configuration) and 5938887—(any configuration), in accordance with the instructions in McDonnell Douglas MD–80 Alert Service Bulletin A27–322, dated August 22, 1991 (hereinafter referred to as ''A27–322'').

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat the inspection at the following intervals:

(1) If the immediately preceding inspection was accomplished using visual means, conduct the next inspection within 1,000 landings.

(2) If the immediately preceding inspection was accomplished using eddy current means, conduct the next inspection within 3,000 landings.

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, remove and replace the slat drive mechanism with a new part, part numbers 5938887—(any configuration) and 5938886—(any configuration), in accordance with A27–322.

New Requirements of This AD

Initial and Repetitive Inspections

(d) Perform visual and/or eddy current inspections, as applicable, to detect cracks of the actuator cylinder support brackets of the slat drive mechanism assembly, in accordance with McDonnell Douglas Alert Service Bulletin MD80–27A322, Revision 03, dated August 4, 1998, at the time specified in paragraph (d)(1), (d)(2), or (d)(3), as applicable, of this AD.

(1) For airplanes on which no inspection has been performed in accordance with AD 91–21–11: Perform both visual and eddy current inspections prior to the accumulation of 10,000 total landings or within 30 days after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the immediately preceding inspection was performed using visual means in accordance with AD 91–21–11, accomplish the requirements of paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.

(i) Within 1,000 landings after the immediately preceding visual inspection, perform a visual inspection; and

(ii) Within 6 months after the last visual inspection required by paragraph (d)(2)(i) of this AD, perform an eddy current inspection.

(3) For airplanes on which the immediately preceding inspection was performed using eddy current means in accordance with AD 91–21–11: Perform an eddy current inspection within 3,000 landings after the last eddy current inspection.

(e) If no crack is found during any inspection required by paragraph (d) of this AD, repeat the eddy current inspection thereafter at intervals not to exceed 3,000 landings until the actions specified in paragraph (g) of this AD are accomplished for both actuator cylinder support brackets of the slat drive mechanism assembly.

Corrective/Terminating Action

(f) If any cracking is found during any inspection required by paragraph (d) or (e) of this AD, prior to further flight, modify the actuator cylinder support bracket of the slat drive mechanism assembly (Option 1 or 2 for Group 1 or 2 airplanes, as applicable) in accordance with McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, dated February 11, 1998, as specified in paragraph (f)(1) or (f)(2), as applicable, of this AD.

(1) For airplanes identified as Group 1 in the service bulletin: Accomplish the actions as identified in the service bulletin as Group 1 Option 1 or Group 1 Option 2.

(2) For airplanes identified as Group 2 in the service bulletin: Accomplish the actions as identified in the service bulletin as Group 2 Option 1 or Group 2 Option 2.

(g) Accomplishment of the modification of the actuator cylinder support bracket specified in paragraph (f) of this AD constitutes terminating action for the repetitive inspections required by this AD, provided that both actuator cylinder support brackets are modified.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 91–21–11, amendment 39–8058, are approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) The actions shall be done in accordance with McDonnell Douglas MD–80 Alert Service Bulletin A27–322, dated August 22, 1991; McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, dated February 11, 1998; or McDonnell Douglas Alert Service Bulletin MD80–27A322, Revision 03, dated August 4, 1998; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD80–27A322, Revision 03, dated August 4, 1998; and McDonnell Douglas Service Bulletin MD80–27–322, Revision 02, dated February 11, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas MD–80 Alert Service Bulletin A27–322, dated August 22, 1991, was approved previously by the Director of the Federal Register as of October 30, 1991 (56 FR 51645, October 15, 1991).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25764 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990920257–9257–01]

RIN 0694–AB85

Revisions to the Commerce Control List (ECCNs 1C351, 1C991, and 2B351): Medical Products Containing Biological Toxins; and Toxic Gas Monitoring Systems and Dedicated Detectors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Commerce Control List (CCL) of the Export Administration Regulations to implement an October 1998 Australia Group agreement to amend controls on toxic gas monitoring systems and dedicated detectors. This final rule also amends the CCL to authorize, without a license, exports of medical products containing controlled biological toxins (except saxitoxin and ricin) that are developed, packaged and sold for medical treatment. This rule will result in a decreased licensing burden on U.S. industry.

EFFECTIVE DATE: This rule is effective October 7, 1999.:

FOR FURTHER INFORMATION CONTACT: James Seevaratnam, Director, Chemical and Biological Controls Division, Bureau of Export Administration, (202) 501–7900.

SUPPLEMENTARY INFORMATION:

Background

The Australia Group (AG), a multilateral forum for the coordination of export controls to curtail the proliferation of chemical and biological weapons, held its annual consultations in Paris, October 9–15, 1998. The 30 AG member countries agreed to maintain export controls on a list of chemicals,

biological agents, relevant equipment and technology that could be used in the production of chemical or biological weapons. The AG reviews items on its control list periodically to enhance the effectiveness and achieve greater harmonization of member governments' national controls.

At the October 1998 Australia Group consultations, participants agreed to revise the control list entry for toxic gas monitoring systems and dedicated detectors to clarify the scope of controls. To implement this agreement, this final rule amends the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by revising Export Control Classification Number (ECCN) 2B351. Specifically, the phrase ''or organic compounds containing phosphorus, sulphur, fluorine or chlorine'' is deleted from the description of items controlled, and a technical note is added to clarify that systems capable of detecting compounds containing these chemicals are controlled. The Department of Commerce has routinely interpreted this entry to include systems with capability to detect inorganic compounds. The AG discussions confirmed that other AG members agreed with this interpretation.

The Department of Commerce also maintains controls on exports of biological agents that could be used in the production of biological weapons. These materials require a license for export and reexport to all destinations, except Canada. These controls are implemented in accordance with the export control provisions of the Australia Group. Medical products that contain the AG-controlled biological toxins that are prepackaged in units applicable to the intended medical treatment pose no significant proliferation concerns. Therefore, this final rule adds to ECCN 1C991 medical products that contain biological toxins controlled under ECCN 1C351.d, except d.5 and d.6 (ricin and saxitoxin), when such products are developed, packaged and sold for medical treatment. Such products may be exported and reexported without a license to all countries except countries listed in CB Column 3 on the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR). This new exemption from licensing requirements does not apply if the biological toxin is to be exported in any other configuration, including bulk shipments, or for any other end-uses.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 45 minutes for a manual submission and 40 minutes for an electronic submission.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, foreign trade.

Accordingly, 15 CFR Chapter 7, Subchapter C, is amended to read as follows:

1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 774—[AMENDED]

2. Category 1, Materials, of the Commerce Control List is amended by revising the ''List of Items Controlled'' in ECCN 1C351 and revising ECCN 1C991, to read as follows:

1C351 Human pathogens, zoonoses, and ''toxins'', as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.

Related Controls: All vaccines and ''immunotoxins'' are excluded from the scope of this entry. Certain medical products that contain biological toxins controlled under paragraph (d) of this entry, with the exception of d.5 and d.6, are excluded from the scope of this entry. Vaccines, ''immunotoxins'', and certain medical products excluded from the scope of this entry are controlled under ECCN 1C991.

Related Definition: 1.) For the purposes of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. 2.) For the purposes of this entry ''subunit'' is defined as a portion of the ''toxin''.

Items: a. Viruses, as follows:

a.1. Chikungunya virus;
a.2. Congo-Crimean haemorrhagic fever virus;
a.3. Dengue fever virus;
a.4. Eastern equine encephalitis virus;
a.5. Ebola virus;
a.6. Hantaan virus;
a.7. Japanese encephalitis virus;
a.8. Junin virus;
a.9. Lassa fever virus;
a.10. Lymphocytic choriomeningitis virus;
a.11. Machupo virus;
a.12. Marburg virus;
a.13. Monkey pox virus;
a.14. Rift Valley fever virus;
a.15. Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus);
a.16. Variola virus;
a.17. Venezuelan equine encephalitis virus;
a.18. Western equine encephalitis virus;
a.19. White pox; *or*
a.20. Yellow fever virus.

b. Rickettsiae, as follows:

b.1. Bartonella quintana (Rochalimea quintana, Rickettsia quintana);
b.2. Coxiella burnetii;
b.3. Rickettsia prowasecki; *or*

b.4. Rickettsia rickettsii.

c. Bacteria, as follows:

c.1. Bacillus anthracis;
c.2. Brucella abortus;
c.3. Brucella melitensis;
c.4. Brucella suis;
c.5. Burkholderia mallei (Pseudomonas mallei);
c.6. Burkholderia pseudomallei (Pseudomonas pseudomallei);
c.7. Chlamydia psittaci;
c.8. Clostridium botulinum;
c.9. Francisella tularensis;
c.10. Salmonella typhi;
c.11. Shigella dysenteriae;
c.12. Vibrio cholerae; *or*
c.13. Yersinia pestis.

d. ''Toxins'', as follows: and subunits thereof:

d.1. Botulinum toxins;
d.2. Clostridium perfringens toxins;
d.3. Conotoxin;
d.4. Microcystin (cyanginosin);
d.5. Ricin;
d.6. Saxitoxin;
d.7. Shiga toxin;
d.8. Staphylococcus aureus toxins;
d.9. Tetrodotoxin;
d.10. Verotoxin; *or*
d.11. Aflatoxins.

1C991 Vaccines, immunotoxins and medical products, as follows (see List of Items controlled).

License Requirements

Reason for Control: CB, AT.

Control(s)	Country chart
CB applies to 1C991.c.	CB Column 3.
AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: For the purpose of this entry ''immunotoxin'' is defined as an antibody-toxin conjugate intended to destroy specific target cells (e.g., tumor cells) that bear antigens homologous to the antibody. For the purpose of this entry, ''medical products'' are prepackaged in units applicable to the intended medical treatment, and do not include biological toxins in any other configuration, including bulk shipments, or for any other end-uses. Such toxins are controlled by ECCN 1C351.

Items: a. Vaccines containing items controlled by ECCNs 1C351, 1C352, 1C353 and 1C354;

b. Immunotoxins; *and*

c. Medical products containing biological toxins controlled by ECCN 1C351.d, except d.5 and d.6.

3. Category 2, Materials Processing, of the Commerce Control List is amended by revising the ''List of Items Controlled'' in ECCN 2B351 to read as follows:

2B351 Toxic gas monitoring systems and dedicated detectors therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number.
Related Controls: N/A.
Related Definitions: N/A.
Items: a. Designed for continuous operation and usable for the detection of chemical warfare agents or chemicals controlled by 1C350 at concentrations of less than 0.3mg/m ^{3} (see technical note below); *or*

b. Designed for the detection of cholinesterase-inhibiting activity.

Technical Note: Toxic Gas Monitoring Systems, controlled under 2B351.a., include those with detection capability for chemicals containing phosphorus, sulfur, fluorine or chlorine, other than those specified in 1C350.

Dated: September 30, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–26215 Filed 10–6–99; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, 380, and 385

[Docket No. RM98–9–001; Order No. 603-A]

Revision Of Existing Regulations Under the Natural Gas Act

Issued September 29, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: On rehearing, the Federal Energy Regulation Commission reaffirms its basic determinations in Order No. 603 and modifies and clarifies certain aspects of the Final Rule based on the requests for rehearing. Order No. 603 updated the Commission's regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act. The changes were necessary to conform the Commission's regulations to the Commission's current policies.

DATES: The revision to the regulations in this order on rehearing become effective November 8, 1999.

ADDRESSES: Federal Energy Regulatory Commission 888 First Street, N.E. Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael J. McGehee, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–2257

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission 888 First Street, N.E., Washington, DC 20426 (202)208–2246.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission from November 14, 1994, to the present. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. Documents will be available on CIPS in ASCII and WordPerfect 8.0. User assistance is available at 202–208–2474 or by E-mail to cips.master@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

I. Introduction

In this order the Federal Energy Regulatory Commission (Commission) is modifying and clarifying certain aspects of the Final Rule issued in Order No. 603.[1] Specifically, this order (1) clarifies certain aspects of section 2.55, including the 30-day notification requirement, the construction area requirements, and the phrase ''designed delivery capacity'' as it pertains to a storage reservoir; (2) clarifies how a pipeline should apply the construction area guidelines in Appendix A to Part 2; (3) explains the modifications to the existing electronic filing requirements in section 157.6; (4) clarifies that under section 157.8 the Director of the Office of Pipeline Regulation (OPR) may reject an application subsequent to noticing it if the applicant fails to provide necessary information; (5) clarifies certain aspects of section 157.10 that requires that the pipeline make available copies of its application and voluminous or difficult to reproduce material at various locations along the proposed pipeline route; (6) explains aspects of section 157.202(b), including the application of the terms ''closest available size'' and ''sound engineering reasons,'' and clarifies what minor changes to storage operations would encompass; (7) changes the definition of ''interconnecting point'' in section 157.202(b)(2)(ii) to include the related pipeline segment; (8) explains the implications of the dismissal of protests under section 157.205(g); (9) explains the compressor station noise requirements in section 157.206(b)(5); (10) removes the phrase ''due to construction delays'' from section 157.206(c); (11) explains certain environmental requirements in section 157.208(c)(9); (12) clarifies the applicability of the prior notice procedures to increases to the Maximum Allowable Operating Pressures; (13) denies requests that the Commission review its bypass and contract demand (CD) reduction policies in this proceeding; (14) clarifies the automatic and prior notice abandonment authorization in section 157.216; (15) clarifies the application of certain requirements under the National Historic Preservation Act of 1966 in Appendix II to Subpart F and section 380.14; (16) explains the requirements concerning nonjurisdictional facilities in section 380.12(c)(2); (17) clarifies the requirements concerning the cultural resource reports required in section 380.12(f)(2); (18) modifies the minimum filing requirements in section 380.12(k)(4) for information concerning compressor facilities; (19) clarifies the minimum filing requirements applying to the Coastal Zone Management Act in Appendix A to Part 380, Resource Report 8; and (20) explains the siting and maintenance requirements in section 380.15.

II. Background

On April 29, 1999, the Commission issued a Final Rule in Order No. 603 amending its regulations governing the filing of applications for certificates of public convenience and necessity authorizing the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (NGA),[2] and amending the blanket certificate regulations under Subpart F of Part 157. The Final Rule: (1) Conformed the existing regulations with current practices and policies; (2) eliminated ambiguities and obsolete language; (3) made the regulations more germane and less cumbersome; and (4) reduced the existing reporting burden by a total of 8,284 hours. Additionally, the Final Rule consolidated and clarified the Commission's current practices concerning the filing and reporting requirements associated with its environmental review of pipeline construction projects under the National Environmental Policy Act of 1969.[3]

The Commission received rehearing/clarification requests from 10 parties including the American Public Gas Association (APGA), CNG Transmission Corporation (CNG), Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), El Paso Energy Corporation (El Paso), Enron Interstate Pipelines (Enron), Great Lakes Gas Transmission (Great Lakes), Indicated Shippers, Interstate Natural Gas Association of America (INGAA), Process Gas Consumers Group, the American Iron and Steel Institute, and the Georgia Industrial Group (Process Gas), and Williston Gas Interstate Pipeline Company (Williston Basin).

Indicated Shippers filed a motion to file an answer and an answer to requests for rehearing. While our rules do not permit answers to rehearing requests,[4] we may, for good cause, waive a rule.[5] We find good cause to do so in this instance. To achieve a complete and accurate record, we will accept Indicated Shippers' answer.

III. Discussion

A. Section 2.55(a)—Auxiliary Facilities Constructed With Newly Proposed Jurisdictional Facilities

Under section 2.55 of the regulations, the Commission exempts auxiliary facilities, such as valves, drips, yard and station piping, and cathodic protection equipment, from NGA section 7(c) authority. Traditionally, section 2.55 limited the installation of auxiliary facilities to facilities installed on an existing transmission system. In the Final Rule, the Commission stated that it would include in the exemption auxiliary facilities constructed in conjunction with new transmission facilities. However, for auxiliary facilities on newly authorized transmission facilities not yet in service, the Final Rule stated that the Commission would require that the pipeline notify it 30 days prior to installing the auxiliary facilities.

Comments. On rehearing, El Paso and INGAA request that the Commission clarify that the 30-day advance notice requirement is satisfied if the auxiliary facilities are identified in a pipeline's certificate or prior notice application. El Paso states that the pipeline should not be required to make a separate filing to identify such auxiliary facilities.

El Paso and INGAA also request that the Commission clarify that the 30-day advance notification requirement does not apply when such facilities are being constructed on, or at the same time, as facilities which are being constructed automatically under the Subpart F blanket construction certificate. They contend that such notification would essentially nullify the automatic authorization provision and delay construction of such facilities.

Columbia questions what follows once the pipeline notifies the Commission of the impending section 2.55(a) construction. It contends that if the Commission intends to conduct a substantive review of the facilities, it should have the necessary resources to conduct any inquiry in a timely manner.

Commission Response. The Commission intends to review the filings under section 2.55(a)(2) for compliance with the Commission's environmental regulations. The Commission intended that the 30-day notification requirement in section

[1] Revisions of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, Order No. 603, 64 FR 26571 (May 14, 1999), FERC Stats. and Regs. ¶ 31,073 (Apr. 29, 1999).

[2] 15 USC 717b.

[3] 42 USC 4321–4370a.

[4] See 18 CFR 385.213(a)(2).

[5] 18 CFR 385.101(e).

2.55(a)(2)(ii) apply to case-specific projects which include an Environmental Report as specified in section 380.12 of the Commission's regulations or to prior notice projects under section 157.208. It does not apply to projects constructed under the Part 157 automatic authorization procedures. To clarify this in the regulations, we will add the phrase ''except those authorized under the automatic authorization procedures of Subpart F of Part 157 of this chapter'' to section 2.55(a)(2)(ii).

We will also clarify that the 30-day notification requirement does not apply if the auxiliary facilities are identified in the certificate application. We believe that the use of the word ''or'' between paragraphs (ii) and (iii) of paragraph 2.55(a)(2) precludes the application of both to a given project and its related auxiliary facilities. However, we will also modify the introductory paragraph to paragraph 2.55(a)(2) to read, ''[o]ne of the following requirements will apply to any specified auxiliary installation.''

B. Section 2.55(b)—Construction Area for Replacement Facilities in Existing Right-of-Way

1. Existing, Unrelated Rights-of-Way

In the Final Rule, the Commission codified its current policy that limits the construction area for replacement facilities to the temporary work space used to construct the original facilities.

Comments. On rehearing, Great Lakes contends that the Commission did not respond to its comments requesting authority to use its entire existing right-of-way, including Commission-approved rights-of-way unrelated to the construction of facilities being replaced. It claims that any existing right-of-way that has already been disturbed for pipeline construction, has been reviewed for archaeological concerns, and for which the pipeline has obtained appropriate land rights should be available for use. Great Lakes notes that the pipeline would be required to obtain updated clearances for cultural resources and threatened or endangered species prior to using such replacement construction areas. It asserts that the Commission's concerns regarding environmental assessments are not present when the pipeline uses an existing right-of-way. It requests that the Commission explain why use of unrelated, existing right-of-way is not appropriate when use of the existing right-of-way approved for the facilities being replaced is less safe, environmentally disadvantaged, or impractical.

Commission Response. The types of construction activities being conducted under section 2.55 are replacements that should only involve basic maintenance or repair to relatively minor facilities where the Commission has determined that no significant impact to the environment will occur. The Commission believes that the existing right-of-way that was used to construct the original facilities should be sufficient for these types of activities. Pipelines may use their blanket certificate authority to perform projects involving more extensive work that would need additional workspace, including the use of other unrelated rights-of-way. This would allow for the required additional environmental scrutiny. Therefore, those projects should be done under the pipeline's blanket certificate.

As Great Lakes points out, there may be a need for updated clearances. The Commission believes that use of the blanket process is more appropriate in these situations since the replacement regulations do not contain any such requirement. Accordingly, Great Lakes' request that the Commission allow the use of any existing rights-of-way for activities conducted under section 2.55 is denied.

2. Equivalent Designed Delivery Capacity

The Final Rule clarified that the phrase ''equivalent designed delivery capacity'' used in the context of replacement storage wells refers to both the daily deliverability and seasonal cyclic capacity.

Comments. CNG seeks further clarification that ''designed delivery capacity'' refers to the capacity of the entire storage pool, not that of each individual well. CNG states that operators manage the pool on the basis of overall deliverability and that it is the deliverability of the entire storage pool that is certificated, not each individual well in the pool. According to CNG, the deliverability from individual wells will fluctuate over time, and increasing the deliverability of an individual well will not increase the certificated capacity of the entire storage pool.

Commission Response. We agree with CNG that it is the deliverability and capacity of a storage reservoir that is certificated, not the capability of individual wells. We recognize that the deliverability of an individual replacement well may differ from the original well being replaced. However, as long as the replacement well does not alter the underlying parameters of the storage field, *i.e.*, the certificated capacity, deliverability, or storage boundary, and functions in a manner similar to the well it replaced, we will view such a replacement well as having a substantially equivalent designed delivery capacity as the facility it replaced.

C. Appendix A to Part 2—Guidance for Determining the Acceptable Construction Area for Replacements

In the Final Rule, the Commission codified its current policy that requires that replacement facilities must be placed in the existing right-of-way. Appendix A to Part 2 delineates guidelines for the pipeline to use to determine the acceptable construction area for replacement facilities. Subpart (b) of the Appendix requires that the temporary right-of-way (working side) be on the same side as the original construction work area.

Comments. Williston Basin requests that the Commission clarify how subpart (b) applies when there is no documentation as to which side was used in constructing the original pipeline. It contends that it may not always be possible for the pipeline to tell by visual inspection which side was the original working side. Williston Basin suggests that it would be appropriate for the Commission to state that, when the original working side is unknown, the pipeline should make the working side of any replacement activity the side that will have the lowest impact on the environment.

Commission Response. The purpose of Appendix A is to provide guidance for determining the appropriate workspace for replacement facilities constructed under section 2.55 when the original documentation is not available. In Appendix A, the Commission is attempting to maximize the probability that the pipeline construction footprint of the replacement activities will coincide with the footprint of the original construction and that the nature of the environmental impact will be the same.

As stated, the guidelines in paragraph (a) are to be used in the absence of contradictory physical evidence. Any reasonable physical evidence pointing to the likely location of the working side during the initial construction can be used to estimate the size and location of the original work space. For example, if the line to be replaced is a loop adjacent (within about 25 feet) to another line, it may be assumed that the working side was on the opposite side of the line to be replaced. If there are trees or structures close to one side of the pipeline to be replaced, and they predate the pipeline, then it is unlikely that side was the working side.

However, we note that when visual inspection fails, *i.e.*, if there are no reasonable hints to the location of the working side, the facilities cannot be constructed under section 2.55. They must be constructed under the Subpart F of Part 157 blanket program to ensure protection of the resources. The Part 157 regulations include criteria for minimizing environmental impacts without relying on the company's guess as to where the facilities should be constructed to have the lowest impact on the environment.

D. Section 157.6—Applications; General Requirements

1. Electronic Filing Requirements

The Final Rule modified the existing electronic filing requirements for certificate applications.

Comments. On rehearing, Enron states that section 157.6(a)(2) has been revised to require that all applications and exhibits are to be ''submitted in electronic format as prescribed by the Commission.'' Enron is unsure as to whether the Commission is proposing substantive changes to the current electronic reporting requirement or is placing a general reference to electronic formats in the regulations in anticipation of new or modified electronic formats that may be a result of the proceeding in Docket No. PL98–1–000.[6] Enron seeks clarification that the Commission is not imposing new electronic filing requirements as part of the Final Rule. INGAA raises similar concerns.

Commission Response. The Final Rule does not impose any new electronic filing requirements. The documents listed in section 157.6(a)(2) simply delineated the specific documents that previously were included in the all encompassing phrase: ''[a]pplications, amendments thereto, and all exhibits and other submissions required * * * under this subpart'' in section 157.6(a)(1).

Additionally, on November 30, 1998, a Notice to Provide Additional Guidance about the Revised Electronic Filing Requirements for Certificate Applications was issued that explained the specific electronic format requirements and reduced the electronic filing requirements.[7] These reduced electronic filing requirements will be in effect pending the outcome of the proceeding in Docket No. PL98–1–000.

2. Pricing Policy Statement

In the Final Rule in section 157.6 (b)(8) the Commission codified certain filing requirements in accordance with the *Pricing Policy Statement For New and Existing Facilities Constructed By Interstate Natural Gas Pipeline.*[8] On September 15, 1999, the Commission issued a new statement of policy to provide the industry with guidance as to how the Commission will evaluate proposals for certificating new construction.[9] On rehearing, we will make conforming modifications to section 157.6(b)(8) to reflect the new policy statement.

E. Section 157.8—Acceptance for Filing or Rejection of Applications

In the Final Rule, the Commission revised section 157.8 to provide that the Director of OPR may reject an application within ten days of filing if the application ''patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders.'' The ten day time frame is intended to provide the Director the opportunity to make an initial finding that the application contains the minimum information necessary for providing public notice of the application and to begin preliminary processing. As stated in the Final Rule, the Commission recognizes that not all information, for example, certain environmental data, may be available at the time of filing. However, we note that once the application has been noticed, the applicants are required to file any and all information necessary to complete their application. We wish to clarify that this section does not limit the Director's ability to subsequently reject the application after it has been noticed if the applicant fails to provide any information needed to fully process that application. Therefore, we will modify section 157.8 to state that the Director may also reject an application after it has been noticed if it does not conform to the requirements of Part 157.

F. Section 157.10—Interventions and Protests

1. Availability of Application

Section 157.10 of the Final Rule requires that complete copies of the application must be available in each county in the project area within three days of the filing of the application.

Comments. CNG contends that the application should not be made available until three business days from the time the application is issued a docket number and after a Commission notice is issued. According to CNG, if the Commission were to reject the application later than three days after it were filed, the entire project would already be in the public domain, even though no project was then on file with the Commission. CNG argues that the pipeline should not be subjected to this risk of disclosure. Further, it could cause substantial confusion and complication to have a copy of an application available to the public before a docket number has been assigned and the application has been accepted by the Commission. CNG contends that if the application were rejected or modified to respond to Commission comments, there could be multiple versions of a project in circulation. In that event, CNG states that the benefit of providing a copy to the public early to give time for a more thorough review would be outweighed by the burden of reviewing a later, conflicting document.

Commission Response. We will modify Section 157.10 to require that pipelines have complete copies of their applications available within three business days of the date a filing is issued a docket number. We will not, however, extend the time the application needs to be made available to after the application is noticed. The Final Rule put pipelines on notice that they must file substantially complete applications or face the risk of rejection. It is incumbent upon the pipeline to ensure that each application is complete and ready to be noticed when it is filed to avoid the potential for rejection, the risk of disclosure, and the possibility of multiple versions.

Further, we note that in the Final Rule in Docket No. RM98–17–000, the Commission is requiring that pipelines notify all affected landowners within three business days of receiving the docket number for a filed application. The Commission believes that the application should be available for those landowners to review when they receive the notice that the application has been filed.

2. Voluminous/Difficult To Reproduce Material

In section 157.10, the Final Rule also provides that pipelines do not have to serve voluminous or difficult to reproduce material, such as copies of environmental information, on all parties in the proceeding. However, the Final Rule does require that the pipelines have copies of the material available for inspection in each county in the project area within three business

[6] 63 FR 27532 (May 13, 1998).

[7] Notice to Provide Additional Guidance About the Revised Electronic Filing Requirements for Certificated Application, 80 FERC ¶ 62,139 (1998).

[8] 71 FERC ¶ 61,241 (1995).

[9] Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (1999).

days of filing the material with the Commission. It also requires that the pipelines make copies of the material available to any party that requests it within five business days of receiving a request for the material.

Comments. Enron and INGAA seek rehearing of the requirement to serve complete copies of applications, including voluminous or difficult-to-reproduce materials, on individual parties that request the information. Enron contends that the requirement to establish public reference sites to provide access to complete copies of applications is not an insignificant effort. According to Enron, this effort is worthwhile only to the extent that it offsets the requirement to produce voluminous or difficult-to-reproduce materials. However, Enron questions the cost/benefit of this effort if parties may nevertheless request individual copies. Enron requests that pipelines only be required to serve a copy of the application, excluding voluminous or difficult-to-reproduce materials. Enron suggests that pipelines make the voluminous or difficult-to-reproduce materials available on an Internet web site rather than be required to produce hard copies of such material. Enron states that such materials will also be available at the designated public locations. INGAA agrees.

Great Lakes also seeks clarification concerning the meaning of the requirement to make electronic copies available in each county. It requests that the Commission accept placement of the complete application on the pipeline's Internet website as complying with the requirement to keep electronic copies in each county.

Additionally, Great Lakes is concerned with the Commission's requirement that voluminous materials be made available in each county in the project area. Great Lakes contends that libraries and public buildings may not be available in every county, may not have evening and weekend hours, and that such places may not consent to or be able to accommodate the public in this way. Great Lakes seeks clarification as to whether any non-public buildings are acceptable as a central location. It also seeks rehearing and a determination that flexible hours of operation are not a requirement but a goal, because one alternative, the County Clerk's office, would not offer evening and weekend hours.

Commission Response. Upon reconsideration, we will modify section 157.10 and not require that the applicant serve a copy of the entire voluminous or difficult-to-reproduce material when requested by a party to the proceeding. However, we will require that if an individual party requests information concerning that party's particular piece of property that may be included in the voluminous and difficult to reproduce material, the applicant should provide that particular information to that party within 5 business days from the request. For example, if a landowner requests a copy of the map that shows where the pipeline will be going through that landowner's property, the applicant should provide the landowner with a copy of the portion of the map that includes that particular piece of property.

The Commission intends that pipeline applications be readily accessible and available to all interested parties along the pipeline route. We will not change our requirement that complete copies of applications, including voluminous or difficult-to-reproduce materials must be placed in publicly available places in each county along the pipeline route. However, in light of the rehearing requests, we will modify and further clarify that requirement.

First, the application can either be in paper or electronic format. A pipeline does not have to provide both paper and electronic copies, unless it desires to do so. However, it must provide a complete copy in either one of the two formats. If the copy is in electronic format, any party accessing such copy should be able to obtain a hard copy version from the electronic format.

Second, we also believe that it is reasonable to allow pipelines to establish an Internet web site on which to post its voluminous and difficult-to-reproduce material, in addition to having such material available at public sites along the project route. However, because not everyone has access to the Internet, we will still require pipelines to have complete copies available in each county along the pipeline route.

Finally, we will modify section 157.10 to allow the applicant more flexibility in determining where the applications will be placed for public viewing. The applicant should place copies of the complete application, including the voluminous and difficult-to-reproduce material, in central locations in each county with public access and flexible hours. We expect the applicant will use its best judgement in determining the best location to put the materials.

G. Section 157.202(b)(2)(i)—Eligible Facilities

1. Replacement of Mainline and Lateral Facilities

The Final Rule stated that replacing pipeline and compression facilities must be done for sound engineering reasons and not for the primary purpose of creating additional mainline capacity. The order emphasized that such replacement facilities must be the closest available size and horsepower rating to the facilities being replaced.

Comments. Columbia states that the requirement that the replacement be the ''closest available size'' may be overly restrictive and go beyond the Commission's intended goal. Columbia states that on older portions of its system, it has inconsistently sized pipe in the same area. For example, in storage fields, Columbia may have a several mile pipeline comprised of 4-, 6-, 8- and 10-inch pipeline in alternating segments. Columbia states that when one of those segments need to be replaced, sound engineering practice dictates that a single size pipe be selected for all replacements on that line. It claims that this would permit more efficient pipeline maintenance by use of smart pig technology through longer segments. Columbia also asserts that it would also reduce the need for installing multiple pig launchers and receivers. To that end, Columbia states that it might choose to replace a 4-inch segment with 8-inch line, solely for the purpose of achieving maintenance related uniformity, even though 4- and/or 6-inch pipe is available. Columbia is concerned that such a replacement might not qualify under the blanket certificate regulations. Columbia requests that the Commission refine the expansion of eligible facilities so that replacements may be done for sound engineering reasons without the restriction that the replacement must be the closest available size to the facility being replaced.

Conversely, Indicated Shippers request that the Commission modify the Final Rule to eliminate automatic authorization of replacement facilities that can increase mainline capacity. Indicated Shippers contend that pipelines will use this authority to circumvent the spending caps on blanket authorization. Indicated Shippers claim that the Commission's statement in the Final Rule that pipelines should not segment a project to circumvent the automatic or prior notice spending limits, acknowledges that pipelines will have an incentive to do so but fails to impose adequate safeguards. They claim that any

challenge to whether facilities were constructed for sound engineering purposes would result in a battle of expert engineers and professional judgements that may differ substantially. Further, they argue that a shipper's ability to file a complaint against a pipeline for an apparent attempt to circumvent the spending caps would be inherently limited because the shipper is burdened with assembling the necessary facts to support the complaint and that the pipeline will have exclusive possession of the relevant information.

Finally, Indicated Shippers assert that the Commission's suggestion that the parties could challenge an improper mainline expansion in a future rate case ignores the elimination of the three-year rate filing requirement in Order No. 636. As such, the pipelines have no legal requirement to file a rate case by any date certain.

Commission Response. We underscore our policy that the blanket certificate regulations cannot be used in a manner that will alter mainline capacity in any substantive manner. Thus, we require that replacements be done for sound engineering reasons and not for the primary purpose of creating additional mainline capacity. We intend that virtually the same criteria applicable under section 2.55(b) apply to replacements under the blanket certificate. Namely, the existing facilities are or will soon become physically deteriorated or obsolete, and the replacement will not result in a reduction or abandonment of service through the facilities. While replacements under section 2.55(b) must also have a substantially equivalent designed delivery capacity as the facilities being replaced, we recognize that replacements done under the blanket certificate may result in an incidental increase in mainline capacity because the replacement facilities do not exactly match the original. However, pipelines are still required to design the replacements so that they have a substantially equivalent designed delivery capacity and are prohibited from using the blanket certificate to create new point to point mainline capacity via the replacement procedure. Thus, there must be a physical need to replace facilities.

We emphasized in the Final Order that replacements must be the closest available size and horsepower rating to the facilities being replaced. The situation described by Columbia, to the extent it is required for sound engineering reasons, *i.e.*, to allow continuous pigging and minimize the number of launchers and receivers, could qualify for blanket treatment. However, we envision limited applicability for such replacements. As described by Columbia, these type replacements may pertain to older, inconsistently sized sections, such as in storage fields or producing areas. We do not intend for pipelines to use this rationale to replace long sections of mainline pipeline under the blanket certificate under the guise of ''efficient pipeline maintenance.'' We reiterate that the pipeline must be able to support its prudent decision to use any replacement facility that is not the closest available size and/or horsepower rating to the facility being replaced.

Indicated Shippers reiterate its opposition to automatic authorization of facilities that could increase mainline capacity. As stated in the Final Rule, replacement facilities must not create new, usable capacity that a pipeline would otherwise need to certificate in a separate section 7(c) proceeding. Pipelines are reminded that the procedures for constructing replacement facilities under the blanket certificate do not allow pipelines to circumvent the section 7(c) authority needed to construct projects for new mainline capacity. Additionally, section 157.208 specifically prohibits pipelines from segmenting projects to circumvent the cost limits under the blanket certificate.

The Commission intends to monitor the effect the newly granted automatic authorizations have on the workings of the industry and may consider whether further changes are necessary. In the interim, if Indicated Shippers believe that a pipeline is violating or deliberately circumventing the Commission's regulations, it should bring the alleged violation to the Commission's attention by filing a complaint. Finally, although the three-year filing requirement was eliminated by Order No. 636, whenever a rate case is filed, the pipeline must include the costs of new plant. At that point, any such costs associated with the alleged improper mainline expansion would be open to challenge.

2. Minor Storage Operations

In the Final Rule the Commission modified section 157.202(b)(2)(ii)(D) to allow minor changes to storage field operations, but did not allow the drilling of storage wells as eligible facilities.

Comments. CNG contends that in the NOPR the Commission proposed to exclude any facility required to test, develop, or utilize an underground storage field as an eligible facility under the blanket certificate. According to CNG, the Commission intended to allow minor changes to field operations and facilities, such as rerouting or changing storage field lines. CNG argues, however, that the practical result of the change in the Final Rule was to prevent minor modifications of facilities under the blanket certificate.

CNG also contends that while the Final Rule states that wells must still be drilled under section 157.215, it is not clear that this section applies to existing storage pools, rather than just new storage pools. CNG questions whether drilling a new storage well in an existing pool is permitted under this section.

CNG seeks rehearing of this issue and requests that the Commission implement its intent to provide for minor changes to field operations and facilities, by changing the ''or'' back to an ''and,'' and clarify that new wells can be drilled in existing storage pools under section 157.215.

Commission Response. Under the Commission's regulations, pipelines currently can use their blanket certificate to construct and operate facilities to test and develop underground storage reservoirs for the possible storage of gas. However, such facilities are excluded from the definition of eligible facilities and must be constructed separately under section 157.215. Once such a reservoir is tested and developed, pipelines must obtain separate authority under section 7(c) in order to utilize a storage reservoir to render service. We are not altering that authority here.

In modifying section 157.202(b)(2)(ii)(D), the Commission intended to continue to exclude facilities required to test and develop storage fields from the definition of eligible facilities. We also intend to exclude wells needed to utilize an underground storage field. However, the regulation will allow pipelines to make minor changes to field operations and facilities, such as rerouting, changing, or adding storage field lines. We intend to allow pipelines to make modifications that will improve the operation and/or flexibility of a storage field, without altering the parameters of the underlying certificate authority.

As stated in the Final Rule, we do not intend for the change in this section to allow pipelines to drill additional injection/withdrawal wells under the blanket certificate because such wells may inherently alter the deliverability, capacity, or boundary of a reservoir. Drilling new injection/withdrawal wells in existing storage pools requires separate section 7(c) authorization. We will revise section 157.202(b)(2)(ii)(D) to clarify that it applies only to the testing

or developing of underground storage fields.

H. Section 157.202(b)(12)—Interconnecting Point

In the Final Rule, the Commission limited interconnecting points to the tap, metering, metering and regulating (M&R) facilities, and minor related piping. The Commission found that any related pipeline connecting two interstate pipelines would function as a mainline facility and thus, not qualify as an eligible facility.

Comments. El Paso states that the practical effect of the Commission's decision prevents ''long'' segments of interconnecting pipeline between two transporters of natural gas from being constructed under the blanket certificate. El Paso, Enron, Great Lakes, INGAA, and Williston Basin all believe that interconnecting segments should be included along with the tap and meter as eligible facilities.

El Paso argues that there is no functional difference between an ''interconnecting point'' that requires ten feet of interconnecting pipeline and a point that requires five miles of pipeline. According to El Paso, however, the Commission will allow the ten foot segment to be constructed as an eligible facility (as minor piping) but not the five mile segment. El Paso contends that both short and long interconnecting segments are capable of receiving/delivering the same level of volumes, provide the same flexibility to permit backhaul arrangements, could be capable of accommodating bi-directional gas flows, and would have the same effect on gas flows on the two interconnecting pipelines. Under these circumstances, there is no legitimate ''operational'' reason to differentiate between a short and long interconnecting segment. Enron and INGAA agree that interconnecting pipeline of various lengths share these operating characteristics.

Enron and INGAA contend that interconnecting pipeline segments will facilitate interconnection of the pipeline grid. El Paso, however, argues that the Commission's goal of fostering development of a national pipeline grid is hampered without including long interconnecting segments as eligible facilities.

El Paso and INGAA state that the spending limits for blanket certificate construction will effectively limit the length of any interconnecting pipeline. Thus, they argue, constructing long interconnecting pipeline cannot impact ratepayers to a greater extent than construction of any other eligible facility.

El Paso further argues that the Commission does not support its conclusion that a ''long'' interconnecting pipeline between two transporters constitutes mainline, not supply or delivery lateral. INGAA contends that interconnecting pipeline does not function differently than a lateral line; both facilities are designed to receive and/or deliver gas supplies. El Paso states that the only difference between a lateral and an interconnecting pipeline is that a lateral generally connects a pipeline to a production field, gathering system or customer delivery point, whereas interconnecting pipeline connects a pipeline to another pipeline. According to El Paso, that difference cannot serve as a basis to find that ''long'' interconnecting pipeline performs a mainline function, while interconnecting points, including minor related pipeline, are eligible facilities.

Commission Response. In *KN Interstate Gas Transmission Company (KN Interstate),*[10] we found that a 2-mile pipeline was not an interconnecting point. The order clarified that ''interconnecting point'' under section 157.208(a) specifically refers to taps, meters, M&R facilities and minor piping. We adopted that definition in the Final Rule. However, upon reconsideration, we will grant rehearing on this issue. We will allow interconnecting pipelines between Part 284 transporters to be constructed as eligible facilities, subject to the cost limits under the blanket certificate. We agree that such facilities do not operate as mainline facilities or extensions of mainline facilities, because they do not alter the mainline capacity.[11] We will view interconnecting pipeline segments in the same manner that we view lateral lines—both serve to receive and/or deliver gas supplies, and both can be constructed automatically, subject to the cost limits under section 157.208. While we stated in *KN Interstate* that a 2-mile pipeline was not an interconnecting point, we now believe that interconnecting pipelines between Part 284 transporters should be covered under the blanket certificate because they display more characteristics in common with lateral lines than with mainlines. Thus, we will change the definition in section 157.202(b)(2)(ii) to reference interconnecting facilities, instead of interconnecting points. We will also change the definition in section 157.202(b)(12) to encompass both the interconnecting point facilities and the related pipeline segment necessary to interconnect two Part 284 transporters. Since the length of such segments will be governed by the cost limits of the blanket certificate, these facilities will have a minimal impact on a certificate holder's system. Upon reconsideration, we believe that allowing interconnecting pipeline segments is consistent with the intent of the blanket certificate, which authorizes pipelines to construct routine facilities that have relatively little impact on ratepayers or pipeline operations.

I. Section 157.205(g)—Withdrawal or Dismissal of Protest

The Final Rule authorized the Director of OPR to dismiss any protest to a prior notice filing which does not raise a substantive issue and fails to provide any specific reason or rationale for the objection.

Comments. APGA states that the Commission has not documented the number of ''no issue'' protests that are the basis for the change in the regulation. APGA surmises that there are no protests to bypasses that fail to raise substantive issues. However, APGA contends that it is the Commission's practice to refuse requests for discovery when a protested prior notice is converted to a section 7(c) application. According to APGA, the Commission concluded in a recent order that the bypassed distributor that protested the application had ''not proffered any evidence indicating that unfair competition or undue discrimination has occurred,'' while simultaneously denying the Local Distribution Company (LDC) the opportunity to seek information from the pipeline that might prove such undue discrimination.[12] APGA argues that if an LDC cannot obtain details of the bypass ''deal,'' then it stands to reason that it will not prove its case to the satisfaction of the Commission. APGA fears that in such a situation the Director of OPR could conclude that distributors that do not prove their case will also fail to ''raise a substantive issue and fail to provide any specific detailed reason or rationale for its objection.'' Thus, LDCs would be denied not only due process rights to obtain information to make a case, but they would be denied due process completely by the summary rejection of a protest to a bypass application ten days after it is filed. APGA argues that the absence of process will rob the Commission of its opportunity to detect

[10] 83 FERC ¶ 61,305 (1998).

[11] However, to the extent that any interconnecting facility will alter mainline capacity of either Part 284 transporter, such facility will not be covered under the blanket certificate.

[12] *See* Transcontinental Gas Pipe Line Corp., 87 FERC ¶ 61,136 (1999).

unfair competition because industry participants, particularly LDCs, will not be able to bring facts to its attention.

Alternatively, APGA requests that the Commission clarify the relationship among any dismissal by the Director of OPR, conversion to a section 7 proceeding, and the 30-day reconciliation period. APGA contends that the Commission would enforce a reconciliation or settlement period, yet this period would appear to come after the dismissal of the protest. Therefore, APGA contends that it is unlikely that there can be any settlement on a non-existent protest. APGA states that the purpose of the reconciliation period is to obtain the withdrawal of the protest; the end-user and the pipeline that seek to bypass the LDC need not talk to the LDC if the LDC's protest has been dismissed.

El Paso and INGAA state that section 157.205(g) provides that when a protest is dismissed by the Director of OPR, the notice requirements will not be fulfilled until the earlier of: (1) 30 days after the deadline for filing protests and interventions (referred to as the ''waiting period''); or (2) the dismissed protesting party notifies the Commission that its concerns have been resolved.

Both El Paso and INGAA believe that imposing a ''waiting period'' after a protest is dismissed unfairly penalizes pipelines and rewards protesting parties which fail to raise substantive issues or provide adequate support for their claims. They argue that if a protest is dismissed, a pipeline should not have to wait the additional 30 days before it can commence construction. They further argue that this section rewards protestors that file frivolous protests, which is inconsistent with the intent of the section. They also claim that this treatment is inconsistent with the Commission's treatment of withdrawn protests under the blanket certificate. El Paso states that prior notice authorization becomes effective on the day after all protests are withdrawn. El Paso believes that there is no reason to treat a dismissed protest differently than a withdrawn protest.

El Paso, INGAA, and Williston Basin contend that if the Director of OPR dismisses a protest within the 45-day notice period, and there are no other protests, the proposed construction should be deemed authorized consistent with the prior notice procedures, *i.e.*, on the day after the 45-day protest/intervention period. If the Director of OPR dismisses a protest after the 45-day protest/intervention period has passed, and there are no other protests, El Paso and INGAA contend that the proposed construction should be deemed authorized on the day after the protest is rejected.

Indicated Shippers disagree with El Paso's position that the Commission should not require a pipeline to wait up to 30 days beyond the protest deadline if the Director of OPR dismisses a protest for failure to raise a substantive issue. Indicated Shippers state that a protestor may appeal the dismissal of its protest to the Commission. Thus, the additional 30 days that the Commission would add to the end of the 45-day protest period does not constitute ''undue delay.''

Commission Response. First, we find the APGA's concerns that it will be denied due process unfounded. As we stated in the Final Rule, a protesting party must substantiate its allegation, not necessarily prove that the allegation is true. As long as the protesting party provides some substantiating evidence, the protest will not be dismissed. Further, the party still has its right to request rehearing and have the dismissal reviewed by the Commission, and subsequently by the court of appeals.

Second, we disagree that there is no reason to treat a dismissed protest differently than a withdrawn protest. The 30-day period is to allow appeal of the Director of OPR's action to the Commission, which is required under sections 375.301 and 385.1902 (Rule 1902) of the regulations.[13] While a frivolous protest may delay construction beyond the 45-day prior notice protest period to allow for the required right to file for rehearing, the application does not roll over to a section 7(c), which potentially could result in substantial delays for the applicant. Thus, while construction may be delayed in such a case, it only will be delayed for a minimal period.

Finally, we believe the pipeline still has an incentive to reconcile or settle with the party with the dismissed protest. For example, the Commission may grant the request for rehearing, thereby reinstating the protest and possibly converting the prior notice proceeding to a section 7(c). Thus, the pipeline may want to resolve the protesting party's concerns before the rehearing period has run in order to commence construction sooner.

J. Section 157.206(b)(5)—Compressor Station Noise

In the Final Rule, the Commission updated section 157.206(b)(5) to bring it into line with current usage concerning limitations on compressor station noise levels. Specifically, it requires that the noise attributable to any new compressor stations, compression added to an existing station, or any modification, upgrade or update of an existing station, must not exceed a day-night level (Ldn) of 55 dBA at any pre-existing noise-sensitive area (such as schools, hospitals, or residences).

Comments. On rehearing, Columbia contends that the modification would inappropriately include potential noise effects of any change to an existing compressor station, not just from compressor unit modifications. It claims that nothing has been presented in this proceeding to suggest that there is a noise concern for other aspects of compressor station operations beyond the compressor units themselves.

Commission Response. In fact, it was the Commission's intent to include any potential new noise source or any change in the existing station that might have an effect on the noise generated by the station and be heard at nearby noise-sensitive areas. There are many potential modifications that could do this, including: additions or changes to the cooling fans; modification to suction or discharge piping; addition or modification of the gas scrubbers; changes to metering facilities (including purely operational changes); and removal of structures or other screening. Likewise, there is a wide range of modifications that cannot reasonably be expected to have any effect on noise (*e.g.*, utility, administration, or maintenance structures or their contents, and communications equipment). In these cases, surveys would rarely be required. The companies should be able to distinguish between the different types of modifications. However, there may be occasions where a company would want to do a noise survey even if experience indicates there is little probability for an effect. For example, there may be instances where a complaint or an inspection results in a need for such surveys. In these instances, which we believe will be rare, the surveys would be done after the change was made.

While this same wording is used in section 380.12(k), as long as the application specifies that the modification (not new or changed compressor units) would have no noise impact, it will be up to the Commission's staff to determine if a noise analysis is needed. We emphasize, however, that noise analyses are always needed for new or changed compressor units.

[13] Section 375.301 states that ''[A]ny action by a staff official under the authority of this subpart may be appealed to the Commission in accordance with Section 385.1902 of this chapter.''

K. Section 157.206(c)—Commencement

The Final Rule amended the regulations to allow for facilities to be completed ''and made available for service'' instead of ''in actual operation'' within one year of authorization. The Final Rule also provides that a certificate holder may apply to the Director of OPR for an extension of the one year deadline ''due to construction delays.''

Comments. El Paso and INGAA argue that the Commission should delete the phrase ''due to construction delays'' and return to its practice of permitting pipelines to seek an extension of the deadline for any reason. They state that extensions may be necessary and appropriate for reasons other than construction delays. El Paso offers, for example, a situation where a pipeline proposes to construct a delivery lateral to serve a new power plant which is not expected to be placed into service for a couple of years. There, a plant owner may need to ensure that all regulatory authorizations are in place before it can obtain the financing and contracts necessary to commence construction of the plant. In such a situation, it contends that a pipeline may need to seek prior notice approval more than a year in advance, while not actually constructing facilities until the plant is ready to go on line. Thus, it argues the pipeline would need to request an extension of the one year deadline. El Paso states that if the Commission does not revise section 157.206(c), pipelines face two undesirable alternatives in the future: (1) Construct facilities far in advance of the end-user's projected service date; or (2) file section 7(c) applications for facilities which otherwise could be constructed under the blanket certificate.

Commission Response. The phrase ''construction delays'' was used to differentiate between pipeline delays and delays attributable to a shipper/end-user. We intend for this section to encompass situations such as that described by El Paso. However, in order to clarify this intent, we will remove the phrase ''due to construction delays.'' Further, the next to last sentence in section 157.206(c) is modified to read: ''The certificate holder may apply to the Director of the Office of Pipeline Regulation for an extension of this deadline.''

L. Section 157.208(c)(9)—Prior Notice

In the Final Rule, the Commission required that a copy of consultations for the Endangered Species Act, the National Historic Preservation Act, and the Coastal Zone Management Act be included in all prior notice filings.

Comments. On rehearing, INGAA, Columbia and Williston Basin state that the Commission should allow the pipeline to submit the clearances during the 45-day notice period. INGAA asserts that it is current industry practice for pipelines to file a prior notice application prior to receipt of final clearances but with a statement that the pipeline anticipates the clearance to be submitted in the near future. It contends that the Commission did not cite any ongoing industry-wide abuse of the process or environmental harm which has resulted from the current practice that would justify a change. INGAA claims that there are significant efficiencies in beginning the prior notice process while the pipeline is waiting to hear back from the agencies for their final agreements.

INGAA proposes that the Commission revise section 157.208(c)(9) to permit a pipeline to file with its prior notice filing: (1) The requests for clearances that have been sent to the various agencies; and (2) a commitment that the final agreements will be in place prior to the end of the 45-day notice period. It also suggests that the application should automatically be deemed protested on the forty-fifth day if the clearances are not filed within 30-days of the prior notice being filed.

Similarly, Columbia claims that ''the benefit of permitting the filing of a prior notice application when clearances are not in hand but soon anticipated is obvious.'' [14] It contends that although a portion of the time required to obtain the clearances will run concurrently, it should not impede the Commission's ability to review the application, nor does it create any risk that the construction might begin without necessary clearance.

Commission Response. We will deny rehearing on this issue. One of the purposes of the Final Rule is to make changes in the Commission's regulations that would streamline the certificate process. Incomplete information at the time applications are filed only fosters inefficiencies and additional expenditures of Commission resources.

INGAA's claim that it is current industry practice to file the prior notice prior to receipt of the agency agreements is overly broad '' a substantial number of pipelines file this information with the prior notice. When clearances are not filed with the application, it requires that the Commission's staff expend effort in keeping track of the status of the filing and then file a protest if the material is not forthcoming. INGAA's proposed compromise, as well as the baseline suggestion, introduces an unnecessary level of complexity and bookkeeping. In addition, in the case of the compromise solution, the company is setting itself up for an automatic protest, more paperwork, and delay that would not be necessary if the prior notice filing is complete when initially filed.

M. Section 157.208(f)(2)—Maximum Allowable Pressure

The Final Rule modified section 157.208(f)(2) to permit pipelines to follow prior notice procedures in order to increase the Maximum Allowable Operating Pressure (MAOP) of laterals constructed under individual section 7(c) authority.

Comments. Indicated Shippers state that the Commission appears to have adopted this proposal based on considerations pertinent to delivery laterals. However, Indicated Shippers contend that MAOP increases have been a basis for concern in recent certificate cases involving supply area facilities, in which producers of ''older'' reserves faced the prospect of shut-in of lower-pressure production as ''new'' higher-pressure production is attached to a pipeline's system. Indicated Shippers state that the Commission must modify the Final Rule to prohibit pipelines from increasing the MAOP of supply area laterals under the blanket certificate procedures. Instead, they argue that all MAOP increases involving supply area laterals should be authorized under Subpart A of Part 157, to provide potentially adversely affected parties a meaningful opportunity to present their concerns in advance of authorization.

Commission Response. In the Final Rule, the Commission intended for supply area facilities to be treated in the same manner as delivery area facilities. In order to clarify this, we will modify section 157.208(f)(2) to recognize that changes in the MAOP of both supply and delivery area laterals are subject to the prior notice procedures under section 157.205. In the Final Rule, we also recognized that there could be potentially detrimental effects on receipt area facilities. Therefore, we subjected this type of construction to the prior notice procedures and denied a request to allow MAOP increases to be implemented automatically. Under the prior notice procedures, all affected parties will have a meaningful opportunity to present their concerns and/or protest any proposed change in the MAOP of any lateral facilities.

[14] See Columbia's request for rehearing, at 5.

N. Section 157.211—Delivery Points

The Final Rule revised section 157.211 to provide for automatic and prior notice authorization to acquire, replace, modify, or construct delivery points. In the Final Rule, the Commission required that all delivery points constructed to provide service for an end-user currently being served by an LDC were subject to the Commission's prior notice procedures.

1. CD Reduction

Comments. APGA contends that the Commission erred by failing to change its policy on contract demand reduction relief in the event of bypass. APGA argues that the Commission should reform its bypass practices and policies. According to APGA, the Commission had not provided CD reduction relief because it demands that an LDC present evidence of a written service contract between the LDC and the bypassed customer. AGPA argues that a contract is not the only way in which to demonstrate that a nexus exists between the LDC's contract demand on the bypassing pipeline and the LDC's service to the end-user. According to APGA, evidence of a history of service rendered to the end-user by the LDC is equally valid.

Commission Response. As stated in the Final Rule, the Commission determines if CD reductions are appropriate on a case-by-case basis depending on the particular facts and circumstances in each case.[15] The Commission does not believe it is necessary to codify its bypass and CD reduction policies in its regulations. Nor does it believe it is appropriate to make any changes to that policy in the context of this rulemaking proceeding. Any challenges to the Commission's existing policies should be made in proceedings where the issues are raised.

2. Prior Notice for Bypass Facilities

Comments. Process Gas contends that the Commission's ruling that the contract must expire before the new delivery point is constructed in order not to constitute bypass creates practical problems with respect to timing of a service change and the strong possibility the gas transportation service to the end user could be interrupted during the transition to the new supply arrangement. Process Gas requests rehearing in order to prevent such interruptions. It contends that the Commission should allow construction of the delivery point as long as deliveries through the new delivery point await expiration of the user's previous contract with its LDC.

Similarly, Great Lakes contends that the Commission's definition of bypass fails to recognize that the pipeline generally can time the construction of its facilities to be in-service contemporaneously with the termination date of the LDC's service. It claims that the gap in service provides a disincentive for customers of LDCs to look for the most economical supply/transportation.

Great Lakes contends that under the Commission's bypass policy, it is engaging in speculation as to the LDC's market by protecting the LDC from the forces of competition and creating a gap in service for any LDC customer desiring to use a more cost-effective combination of supply and transportation. Great Lakes recommends that the Commission not require a prior notice filing unless both: (1) the pipeline's service to the current LDC customer will take the place of the service provided by the LDC; and (2) the effective date of the pipeline's service is prior to the termination date of the LDC's contract with the same end-user. It states that, if both of the prongs are not met, the Commission should only require that the pipeline provide advance notice to the LDC of its intent to construct facilities.

Additionally, Great Lakes and Process Gas contend that the Commission should allow automatic authorization for the construction of delivery points when an end user served by an LDC is constructing a new facility or plant. Process Gas argues that the automatic authorization should apply to new facilities at least as long as those facilities are not expressly covered by an existing contract between the end user and the LDC serving the area. It states that an end user should not be subject to the expense and delays of protests and prior notice procedures simply because it currently receives LDC service for other existing facilities in the LDC's service territory.

Commission Response. As stated in the Final Rule, the Commission believes that an LDC should have notice before facilities that could potentially create a bypass of its service area are constructed. This gives the LDC an opportunity to negotiate and compete with the pipeline for the end user's business. We do not believe that this necessarily protects the LDC from competition or creates a problem with a gap in service. The end user knows the expiration date of the existing contract well in advance. Similarly, the planning and construction of a new plant or facilities is not an isolated incident that is decided on the spur of the moment. The end users and the pipeline have sufficient notice to plan accordingly for the possibility that there may be a delay because of the prior notice procedures. The pipeline need not wait until the expiration of the existing contract before filing a prior notice proceeding. Therefore, being subject to the prior notice procedures need not necessarily delay the ultimate construction of the new delivery point.

O. Section 157.216—Automatic Abandonment

1. Automatic Authorization

The Final Rule allowed a pipeline to automatically abandon a receipt point which had not been used within a twelve-month period if the point is no longer covered under a firm contract.

Comments. Enron requests that the Commission clarify that the availability of a point as an alternate delivery point does not preclude automatic abandonment under the new requirements, provided the point has not been used for a period of one year prior to the effective date of the proposed abandonment. INGAA requests clarification that a pipeline should be able to automatically abandon a receipt or delivery point so long as the point is no longer covered under a firm contract as a primary point—even if the point is listed or has been available as an alternative point. INGAA contends that this is consistent with the Commission's intent since many pipeline shippers designate all or many points as alternatives to their primary points. INGAA argues that if this clarification is not granted, pipelines will be unable to abandon a point if a shipper has designated all points as alternatives to their primary points on their contract. Williston Basin raises a similar concern.

Indicated Shippers argue that the amendments adopted by the Commission provide pipelines with considerable discretion to abuse market power and limit competition. Indicated Shippers contend that the Commission erred in permitting automatic abandonment of any supply area facility. Additionally, they claim that the Commission erred in refusing to require that pipelines obtain consent of upstream supply parties in order to abandon supply area facilities.

According to Indicated Shippers, the Commission must support pre-granted abandonment approvals with appropriate findings that existing market conditions and regulatory structures protect customers from

[15] *See, e.g.,* Transcontinental Gas Pipe Line Corporation, 84 FERC ¶ 61,160 (1998), *order on reh'g,* 87 FERC ¶ 61,136 (1999).

pipeline market power. Indicated Shippers contend that pipelines will strand supply if it is in their economic interest to do so, regardless of what would be best for supply area competition. Indicated Shippers point out that contrary to the Commission's statement that upstream suppliers have contract agreements with shippers and that they should seek the appropriate remedy from the shipper, suppliers have Operational Balancing Agreement (OBA) and pooling agreements with the pipelines. They contend that allowing abandonment of pipeline supply facilities based solely on the non-opposition from shippers may not adequately protect against premature abandonment of those facilities. Indicated Shippers contend that the Commission's abandonment rules must provide adequate procedures to ensure that upstream suppliers and other parties have a meaningful opportunity to present their views and supporting information before a pipeline abandons a supply area facility. They also claim that the Commission has failed to justify the elimination of the supplier's right to protest in a prior notice filing to show that the facility will provide a meaningful level of service in the foreseeable future. The Commission must provide sufficient procedural safeguards to ensure that before a pipeline may abandon jurisdictional facilities or services, the public interest is protected through adequate safeguards against the pipeline's exercise of market power.

Commission Response. The Commission sees no reason to differentiate between primary and alternate firm receipt points. We do not intend to allow automatic abandonment for primary and/or alternate points used for firm service under effective contracts, because parties paying demand charges should retain the availability of those points. However, if firm primary or alternate receipt points are no longer under a firm contract and have not been used in the prior year, such points would be covered by the automatic authority under section 157.216(a)(1). If firm primary or alternate receipt points were in use during the last 12 months, a pipeline can obtain consent of its customers and use the automatic provision under section 157.216(a)(2) to abandon such facilities. If a pipeline cannot obtain consent, it must use the prior notice procedures to abandon such facilities.

As to Indicated Shippers' argument, pipelines cannot unilaterally abandon a receipt point which is under a firm contract or that was used for firm or interruptible service during the past 12 months. While there may be many reasons a receipt point goes unused for some period of time, pipelines should not be required to keep that point available indefinitely in the event a supplier and/or their customers determine they may need it at some later date. Suppliers must rely on their underlying contractual arrangements for remedies. We agree that supply area parties do enter into OBAs and pooling agreements with the pipeline and not the shipper, but these are balancing agreements only. The supply area parties enter into contracts for the sale of gas to shippers who contract with the pipeline for transportation. Thus, shippers such as LDCs and end-users are contractually committed to the suppliers for their required gas supply and to the pipeline for the necessary transportation capacity.

It is to the supply contract with pipeline shippers that these parties must look for a remedy if a supply area receipt point is proposed to be abandoned by a pipeline. These agreements may cover multiple receipt points and a shipper may ultimately decide that it no longer needs service from a particular supply area facility because its needs have changed, alternative transportation options exist, or its supply contract expires or terminates. The point is, supply area parties should be aware of the market area situation affecting both the shippers purchasing their gas and themselves. If a facility is in use by firm or interruptible shippers, pipelines cannot abandon the facility without shipper consent. If the shippers consent, the question revolves around the status of the shipper-supplier contract. If a shipper agrees to the abandonment of a receipt facility while it is still contractually committed to a supplier, the supplier would seek remedy under its contract with the shipper.

In the Final Rule, we required pipelines to make a prior notice filing in order to abandon delivery facilities which were in use during the preceding 12 months. The order stated that delivery points are not eligible facilities because of potential bypass situations and are not covered by section 157.216(b)(2). We continue to believe that prior notice is necessary for the construction of delivery points that involve bypass. However, once such delivery facilities are constructed, bypass is no longer relevant. Thus, it should not be a factor when the time comes to abandon the delivery facilities.

We believe that delivery facilities which have been in use during the preceding 12 months should be eligible for automatic abandonment under section 157.216(a)(2), subject to the pipeline's obtaining the written consent of the customers served through such facilities. Therefore, we will modify section 157.216(a)(2) accordingly.

2. Prior Notice Authorization

Comments. INGAA states that section 157.216(b)(1) provides that a pipeline can abandon any receipt or delivery point if the existing customers consent. INGAA contends that the Commission should strike the reference to receipt point here because it has already clarified that receipt points are eligible for automatic authorization under section 157.216(a)(2) where customer consent has been received.

Indicated Shippers request that the Commission clarify that pipelines must use the prior notice procedures to abandon receipt points and related facilities that exceed the automatic project cost limit. Indicated Shippers take issue with INGAA's request that the Commission delete reference to receipt points in section 157.216(b)(1) because receipt points are eligible for automatic abandonment under section 157.216(a)(2).

According to Indicated Shippers, INGAA assumes that all receipt points qualify under section 157.216(a)(2), which requires that the facility must have been installed under the automatic construction authority of, and met the cost limitations under, section 157.208(a), or must qualify at the time of abandonment. Indicated Shippers state that pipelines, however, may seek to abandon a receipt point (or perhaps multiple receipt points) and other appurtenant supply area facilities as part of a single comprehensive abandonment. Indicated Shippers aver that those facilities taken as a whole may exceed the cost caps in section 157.208, and thus would not qualify for automatic abandonment under section 157.216(a).

Commission Response. The only facilities that can be abandoned under the automatic authority of section 157.216(a) are those facilities that both meet the eligibility requirements and do not exceed the section 157.208 cost limitations. Receipt facilities that were constructed under the prior notice requirements or whose original cost exceed the level for automatic construction are not eligible for automatic abandonment under section 157.216(a). Pipelines must use the prior notice authority under section 157.216(b) to abandon such facilities. However, since the cost limit for automatic construction under the blanket certificate is currently $7.2 million, we do not expect that many

supply area abandonments will exceed this limitation.

3. Abandonment by Sale

In addition, we clarify that using either the automatic or prior notice authority of this section to abandon facilities by sale to a third party does not address the jurisdictional status of the facilities after the effective date of abandonment. The acquiring party is still responsible for seeking a determination, if one is desired, on the jurisdictional status of the facilities.

P. Section 157.217—Changes in Rate Schedules

The Final Rule allowed pipelines to change rate schedules, at customer request, for the purpose of converting Part 157 transportation or storage service to a complementary Part 284 service. The order also provided automatic abandonment authorization for the Part 157 transportation service and noted that pipelines will need to make a filing to reflect removal of the Part 157 rate schedule from their tariff. Consistent with this discussion, we will add a new section 157.217(a)(4) that requires pipelines to remove any Part 157 rate schedule under which service has been totally converted to Part 284 service.

Q. Appendix II to Subpart F—Procedures for Compliance With the National Historic Preservation Act of 1966 Under Section 157.206(d)(3)(ii)

In the Final Rule, the Commission defined the Tribal Historic Preservation Officer (THPO) and added references to the THPO where State Historic Preservation Officer (SHPO) is cited in section 157.202(d)(3)(ii).

Comments. Enron requests that the Commission clarify that, to the extent a THPO declines to comment in writing or a SHPO gives conditional clearance subject to the approval of the THPO, a project will not automatically convert to a case-specific certificate proceeding. El Paso states that the definition of THPO should be consistent with the definition in Section 106 of National Historic Preservation Act (NHPA) and the implementing regulations of the Advisory Council on Historic Preservation (Advisory Council).

El Paso requests that the Commission clarify who will constitute an ''alternative consultant'' and how the consultant will be designated by the Commission. El Paso also requests that the Commission clarify that if the pipeline files a request for clearance, and the SHPO/THPO does not respond to the request within 30 days, the lack of response means that the SHPO/THPO has declined to consult with the certificate holder. Additionally, it contends that the Commission should revise its procedures to provide that if the SHPO/THPO does not respond within 30 days, the pipeline either may proceed With the next step Under the Advisory Council's process or should consult with the alternative consultant designated by the Commission. Finally, it requests that the Commission clarify that if it designates an alternative consultant, that consultant must act within 30 days of the pipeline's request for clearance.

Commission Response. Under section 106 of the NHPA, the Commission is obligated to ensure that the Advisory Council's process is properly carried out. Under the Commission's blanket certificate construction program, the pipeline's construction must be subject to the SHPO/THPO review and it can have no impact to covered cultural resources. If these two requirements are met, the Commission has determined that it has met its obligation under the Advisory Council's regulations.

If the SHPO/THPO have not responded to a company's request within 30 days, it does not mean that they have declined to consult with the certificate holder. Section 106 of the NHPA pertains to responding to the Federal agency official, not the applicant. The Commission views the SHPO/THPO's failure to respond and declining to consult as two different things.

If the SHPO/THPO respond to the certificate holder that they will not consult with the certificate holder, then Appendix II provides that the certificate holder should contact the Commission for a determination of how to proceed. Depending on the circumstances of the project, and the reason given for declining to consult, the Commission staff will designate an alternative entity, to be determined by the Director of the OPR, or it might take over the consultation responsibility. This provision allows the blanket process to continue where it might otherwise be stymied. Projects do not convert to the case-specific authorization procedures because either the SHPO or the THPO decline to consult.

If the SHPO/THPO fail to respond to the certificate holder, it is up to the certificate holder to decide how long it will wait before it requests assistance from the Commission or determines that it can not use the blanket process for a given project. In any event, it may not proceed with the blanket project unless it gets a response from the SHPO/THPO or until it contacts the Commission, which will then determine how to proceed under the particular circumstances.

Finally, we will revise paragraph (d) of Appendix II consistent with the Advisory Council regulation to state that THPO means the Tribal Historic Preservation Officer, as at Title 36 section 800.2(c)(2) of the Code of Federal Regulations (CFR).

R. Section 380.12(c)(2)—Nonjurisdictional Facilities

In the Final Rule, the Commission listed the information it needed to consider the environmental impact of related nonjurisdictional facilities that would be constructed upstream or downstream of the jurisdictional facilities for the purpose of delivering, receiving, or using the proposed gas volumes.

Comments. Generally, INGAA and Enron contend that the Commission is requesting too much information under the filing requirements relative to the four-factor test, [16] and that the information may not be available at the time the pipeline files the application. Further, they contend that the requirements should not be part of the minimum checklist and that the application should not be rejected if the pipeline fails to provide all the information.

Commission Response. The four-factor test cannot be applied without a knowledge of what the facilities are and where they are to be located. Without a description of the facilities, it is difficult to apply the first factor and determine whether the ''regulated activity comprises 'merely a link' in a corridor type project.'' Without location information and a reasonable description of the facilities involved, it isn't possible to apply factors two or three to determine whether there ''are aspects of the nonjurisdictional facility in the immediate vicinity of the regulated activity which uniquely determine the location and configuration of the regulated activity'' or the ''extent to which the entire project will be within the Commission's jurisdiction.'' Locational information, as well as the status of permits needed for the nonjurisdictional facility, are required to determine factor four, ''the extent of cumulative Federal control and responsibility.'' Consequently, the Final Rule requires in sections 380.12(c)(2)(i)(A–C) that the filing provide a brief description, locational information, and status of permits for the nonjurisdictional facilities.

[16] *See* Algonquin Gas Transmission Co., 59 FERC ¶ 61,255, at 61,934 (1992).

The Final Rule also requires consultation with the appropriate agencies for endangered species, cultural resources, and coastal zone management in sections 380.12(c)(2)(i)(D–F). While this information is not needed for the four-factor test, it is usually needed for a complete analysis of the project under the legislation covering these resources. Further, if it hasn't already been done by the nonjurisdictional sponsor, it can usually be done with very little effort at the same time as similar analysis is done for the jurisdictional facilities.

Finally, section 380.12(c)(2)(ii) asks the jurisdictional company to give the Commission its view of the results of applying the four-factor test. This allows the company direct input into the analysis and can help the staff more fully understand the circumstances of the project so it can make an appropriate recommendation to the Commission.

The four-factor test must be applied as early in the environmental review process as possible to avoid substantial delays. Without it, it is difficult for the Commission to determine whether an environmental assessment may suffice or whether an environmental impact statement would be appropriate. It is difficult to identify the scope of whatever environmental document will be prepared without this information, and, in fact, if it is filed after the initial scoping, it is entirely possible that a second scoping process, including additional public meetings, would be required. This would be wasteful of Commission's time and resources, as well as having the potential to delay the environmental review and the Commission's ultimate disposition of the application. Therefore, we believe it is necessary that this information be filed with the application.

S. Section 380.12(f)(2)—Cultural Resources

The Final Rule requires that the documentation of the applicant's initial cultural resources consultation and Overview and Survey Reports must be filed with the initial application. Further, it requires that the comments of the SHPO and land management agency, if appropriate, be filed with the initial application if they are available.

1. Survey Reports

Comments. INGAA requests that the Commission clarify that the intent of the language in section 380.12(f)(2) is not to require that a survey report is necessary in every case. It states that the general practice of the industry is to file an Overview Report with the application. It explains that the Overview Report canvasses existing literature to identify significant sites in the vicinity of the proposed project, and allows the sponsor either to avoid the site or to set forth proposed mitigation measures. It argues that a survey report takes much longer to complete and is significantly more costly since it involves using an archeologist to examine the actual route to determine whether there are additional sites not currently identified in existing literature. It contends that the determination of whether a survey is required is made in consultation with the appropriate SHPO.

Commission Response. As clearly stated in section 380.12(f)(2), it is our intent to require that the survey report is filed with the application in all cases where the report is deemed necessary *during the cultural resources consultations.* As stated, one of the Commission's goals in the Final Rule is to facilitate expediting the certificate process. The current practice of the industry that INGAA alludes to is a significant contributing factor to the time required for Commission review. Applications which do not have the survey reports included are invariably delayed while the applicant and the Commission's staff attempt to satisfy the requirements of the law before a certificate is issued or construction begins. Therefore, the survey report should be filed with the application when it is deemed necessary as a result of the consultations.

2. Issuing Certificates

Comments. Enron and INGAA request that the Commission clarify the timing for providing SHPO/THPO clearances in conjunction with the issuance of a case-specific certificate. They contend that currently certificates are issued contingent on receiving clearances before construction begins on the affected area because the pipeline may not have been able to secure the land rights necessary to perform cultural resource work prior to the issuance of the certificate.

Commission Response. The Commission prefers that the SHPO/THPO comments on the Overview and Survey Reports and the Evaluation Report and Treatment Plan, if required, for the entire project be filed before a certificate is issued. However, we understand that if access to the property is denied by the landowner, comments for the areas to which access has been denied would be filed after the certificate is issued. The Commission will determine on a case-by-case basis if it is necessary to issue a certificate contingent on the pipeline receiving clearances before construction begins.

T. Section 380.12(k)(4)—Compressor Facilities

In the Final Rule, the Commission required that the pipeline provide certain specific information concerning the compression facilities proposed in an application and the noise impact of proposed compression and LNG facilities.

Comments. On rehearing, INGAA contends that much of the information concerning the compression facilities is not available at the time the application is filed because the pipeline has not made its final selection of compressor units. It requests that the minimum checklist be clarified so as to require data that is reasonably available at the time the application is filed. Williston Basin makes a similar request.

Commission Response. The Commission agrees that some of the items listed in the minimum checklist may not be available at the time of filing, especially for large projects with long lead times. This information includes the manufacturer's name and the model number of the compressor units. Therefore, we will modify section 380.12(k)(4)(ii) and paragraph 4 of the Resource Report 9 section of the Appendix A to Part 380 and limit the information the pipeline must provide for new compressors at the time the application is filed to the proposed horsepower of compression, the type of compressor that is needed (turbine, reciprocating), and the energy source (natural gas or electricity). These are basic pieces of information that are needed to formulate a project. If the additional required information listed in the resource report is not available at the time the application is filed, the applicants should justify the absence of such information, especially for smaller projects where there may not be a long lead time. Additionally, the application should specify when the listed information will be available and when it will be filed.

U. Section 380.14(a)(3)—Cultural Resources Procedure for Case-specific Projects

The Final Rule adds a new section 380.14 to the Commission's regulations to address concerns regarding the Commission's compliance with the National Historic Preservation Act.

Comment. INGAA requests that the Commission clarify that if a pipeline files a request for clearance and the SHPO/THPO does not respond to the pipeline within 30 days, the SHPO/THPO has declined to consult with the

certificate holder for the purpose of complying with section 380.14(a).

Commission Response. As explained above, under section 106 of the NHPA, the Commission is obligated to ensure that the Advisory Council's process is properly carried out. If the SHPO/THPO has not responded within 30 days, it does not mean that they have declined to consult with the certificate holder. If the SHPO/THPO does not respond, the applicant should contact the Commission's staff for further guidance.

V. Section 380.15—Siting and Maintenance Requirements

In section 380.15 of the Final Rule, the Commission moved the siting guidelines from section 2.69 in the General Policy and Interpretations section to the environmental regulations in Part 380.

Comments. INGAA requests that the Commission clarify that this section should be titled ''guidelines'' and not requirements since section 380.15(d) lists suggestions to avoid or minimize effects on scenic, historic, wildlife, and recreational values that may or may not be applicable to every project.

Commission Response. In section 380.15 the Commission is requiring that the pipeline consider the areas listed when it is planning a construction activity. If the requirements of the section are ''not applicable'' to a project, then they are not relevant to that project and there is no potential for conflict. For projects where they are applicable, the wording is such that a good faith effort to comply should be adequate. In all cases, the applicant should be able to justify the level of compliance.

W. Miscellaneous

Minor modifications have been made to certain sections in the regulations to correct references to other sections that have been changed and to update the Commission's address and phone number. Additionally, the Commission intends to modify the minimum filing requirement in Resource Report 8 for facilities in a designated coastal zone management area as specified in number nine in Resource Report 8 in Appendix A to Part 380. In addition to requiring that the pipeline identify all facilities located within a designated coastal zone management area, it will also require that the applicant provide a consistency determination or evidence that it has requested a consistency determination consistent with the existing requirements in section 380.12(j)(7).

The Commission will also clarify the minimum filing requirement in Resource Report 3 for threatened or endangered species surveys as specified in number six in Resource Report 3 in Appendix A to Part 380. The text of this resource report clearly and explicitly indicates that the surveys for the species or, in the case where timing problems exist, habitat surveys must be done and reported upon as part of the initial application. This requirement was implicit in the wording of Appendix A. We clarify the intent by making it explicit.

In the Final Rule, the existing paragraph (a)(2), Maps and diagrams, in section 157.6 was inadvertently removed. We will correct this error by reinserting this paragraph.

Finally, in the Final Rule the existing paragraph (g), Reports, in section 157.206 was inadvertently removed and paragraph (h), Treatment of Revenues, was redesignated as paragraph (d). Paragraph (g), Reports, should have been redesignated as paragraph (d) and the Treatment of Revenues paragraphs should have been removed. We will correct this error in this rehearing order.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and record keeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and record keeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and record keeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and record keeping.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends parts 2, 157, 284, 380, and 385, Chapter I, Title 18, Code of Federal Regulations, as follows .

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. In § 2.55, paragraphs (a)(2) introductory text and (a)(2)(ii) are revised to read as follows:

§ 2.55 Definition of terms used in section 7(c).

* * * * *

(a) * * *

(2) *Advance notification.* One of the following requirements will apply to any specified auxiliary installation. If auxiliary facilities are to be installed:

* * * * *

(ii) On, or at the same time as, certificated facilities which are not yet in service (except those authorized under the automatic procedures of part 157 of subpart F of this chapter), then a description of the auxiliary facilities and their locations must be provided to the Commission at least 30 days in advance of their installation; or

* * * * *

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352.

4. In § 157.6:

A. Paragraphs (a)(2) through (a)(5) are redesignated as (a)(3) through (a)(6).

B. A new paragraph (a)(2) is added.

C. Paragraph (b)(8) is revised.

The addition and revision read as follows:

§ 157.6 Applications; general requirements.

(a) * * *

(2) *Maps and diagrams.* An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram.

* * * * *

(b) * * *

(8) For applications to construct new facilities, detailed cost-of-service data supporting the cost of the expansion project, a detailed study showing the revenue responsibility for each firm rate schedule under the pipeline's currently effective rate design and under the pipeline's proposed rates, a detailed rate impact analysis by rate schedule (including by zone, if applicable), and an analysis reflecting the impact of the fuel usage resulting from the proposed

expansion project (including by zone, if applicable).

* * * * *

5. Section 157.8 is revised to read as follows:

§ 157.8 Acceptance for filing or rejection of applications.

Applications will be docketed when received and the applicant so advised.

(a) If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Pipeline Regulation may reject the application within 10 days of filing as provided by § 385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of:

(1) Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys; or,

(2) Environmental reports that are incomplete, but where the minimum checklist requirements of Part 380, Appendix A of this chapter have been met.

(b) An application which relates to an operation, sale, service, construction, extension, acquisition, or abandonment concerning which a prior application has been filed and rejected, shall be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

(c) The Director of the Office of Pipeline Regulation may also reject an application after it has been noticed, at any time, if it is determined that such application does not conform to the requirements of this part.

6. Section 157.10 is revised to read as follows:

§ 157.10 Interventions and protests.

(a) Notices of applications, as provided by § 157.9, will fix the time within which any person desiring to participate in the proceeding may file a petition to intervene, and within which any interested regulatory agency, as provided by § 385.214 of this chapter, desiring to intervene may file its notice of intervention.

(1) Any person filing a petition to intervene or notice of intervention shall state specifically whether he seeks formal hearing on the application.

(2) Any person may file to intervene on environmental grounds based on the draft environmental impact statement as stated at § 380.10(a)(1)(i) of this chapter. In accordance with that section, such intervention will be deemed timely as long as it is filed within the comment period for the draft environmental impact statement.

(3) Failure to make timely filing will constitute grounds for denial of participation in the absence of extraordinary circumstances or good cause shown.

(4) Protests may be filed in accordance with § 385.211 of this chapter within the time permitted by any person who does not seek to participate in the proceeding.

(b) A copy of each application, supplement and amendment thereto, including exhibits required by §§ 157.14, 157.16, and 157.18, shall upon request be promptly supplied by the applicant to anyone who has filed a petition for leave to intervene or given notice of intervention.

(1) An applicant is not required to serve voluminous or difficult to reproduce material, such as copies of certain environmental information, to all parties, as long as such material is publically available in an accessible central location in each county throughout the project area.

(2) An applicant shall make a good faith effort to place the materials in a public location that provides maximum accessibility to the public.

(c) Complete copies of the application must be available in accessible central locations in each county throughout the project area, either in paper or electronic format, within three business days of the date a filing is issued a docket number. Within five business days of receiving a request for a complete copy from any party, the applicant must serve a full copy of any filing on the requesting party. Such copy may exclude voluminous or difficult to reproduce material that is publically available. Pipelines must keep all voluminous material on file with the Commission and make such information available for inspection at buildings with public access preferably with evening and weekend business hours, such as libraries located in central locations in each county throughout the project area.

§ 157.103 [Amended]

7. In § 157.103, in paragraph (i) the reference to ''157.206(d)'' is removed and a reference to ''157.206(b)'' is added in its place.

8. In § 157.202, the second sentence in paragraph (b)(2)(i), and paragraphs (b)(2)(ii)(D) and (b)(12) are revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) * * *

(2)(i) * * * Eligible facility also includes any gas supply facility or any facility, including receipt points, needed by the certificate holder to receive gas into its system for further transport or storage, and interconnecting facilities between transporters that transport natural gas under part 284 of this chapter. * * *

(ii) * * *

(D) A facility required to test or develop an underground storage field or that alters the certificated capacity, deliverability, or storage boundary, or a facility required to store gas above ground in either a gaseous or liquified state, or a facility used to receive gas from plants manufacturing synthetic gas or from plants gasifying liquefied natural gas, or wells needed to utilize an underground storage field.

* * * * *

(12) Interconnection facilities means the interconnecting point, which includes the tap, metering, and M&R facilities and the related interconnecting pipeline.

* * * * *

9. In § 157.206, in the second sentence in paragraph (c) the words ''due to construction delays'' are removed, and paragraph (d) is revised to read as follows:

§ 157.206 Standard conditions.

* * * * *

(d) *Reports.* The certificate holder shall file reports as required by this subpart.

* * * * *

10. In § 157.208, the second sentence in paragraph (f)(2) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.

* * * * *

(f) * * *

(2) * * * In the event that the certificate holder thereafter wishes to change the maximum operating pressure of supply or delivery lateral facilities constructed under section 7(c) of the Natural Gas Act or facilities constructed under this section, it shall file an appropriate request pursuant to the procedures set forth in § 157.205(b). * * *

* * * * *

11. In § 157.216, paragraph (a)(2) is revised to read as follows:

§ 157.216 Abandonment.

(a) * * *

(2) An eligible facility that was installed pursuant to automatic authority under § 157.208(a), or that now qualifies for automatic authority under § 157.208(a), or a facility constructed under § 157.211, provided the certificate holder obtains the written consent of the customers that have received service through the facilities during the past 12 months.

* * * * *

12. In § 157.217, paragraph (a)(4) is added to read as follows:

§ 157.217 Changes in rate schedules.

(a) * * *

(4) The certificate holder shall make a filing to reflect removal of the Part 157 rate schedule from its tariff.

* * * * *

13. In Appendix I to Subpart F of Part 157, the reference to ''157.206(b)(2)(vii)'' in the second paragraph of the introductory text and the introductory text in paragraph 2, and paragraph 3, is removed and a reference to ''157.206(b)(2)(vi)'' is added in its place.

14. In Appendix II to Subpart F of Part 157, in paragraph (7) the phrase '', or THPO, as appropriate,'' is added after the reference to ''the SHPO'' wherever it appears, and paragraph (d) is revised to read as follows:

Appendix II to Subpart F—Procedures for Compliance With the National Historic Preservation Act of 1966 Under § 157.206(b)(3)(ii)

* * * * *

(d) ''THPO'' means the Tribal Historic Preservation Officer, as defined at 36 CFR 800.2(c)(2).

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS ACT, THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

15. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

16. In § 284.11, in paragraphs (a) and (c)(2) the references to ''157.206(d)'' are removed and references to ''157.206(b)'' are added in their place.

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

17. The authority citation for part 380 is revised to read as follows:

Authority: 42 U.S.C. 4321–4370a, 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.8 [Amended]

18. In § 380.8:

A. The references to ''400 First Street NW.,'' and ''825 North Capitol Street NW.,'' are removed and references to ''888 First Street NE.,'' are added in their place.

B. The reference to ''and Producer'' in the second sentence is removed.

C. The telephone number ''376–9171'' is removed and the telephone number ''219–2700'' is added in its place.

D. The telephone number ''357–8500'' is removed and the telephone number ''208–0700'' is added in its place.

§ 380.9 [Amended]

19. In § 380.9, in paragraph (b) the reference to ''825 North Capitol Street NW., room 1000'' is removed and a reference to ''888 First Street NE., Room 2A'' is added in its place.

20. In § 380.12, a heading is added to paragraph (f)(2); and the last sentence in paragraph (f)(2) introductory text and paragraph (k)(4)(ii) are revised to read as follows:

§ 380.12 Environmental Reports for Natural Gas Act Applications.

* * * * *

(f) * * *

(2) *Initial filing requirements.* * * * If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey report must be filed with the application.

* * * * *

(k) * * *

(4) * * *

(ii) Include sound pressure levels for unmuffled engine inlets and exhausts, engine casings, and cooling equipment; dynamic insertion loss for all mufflers; sound transmission loss for all compressor building components, including walls, roof, doors, windows and ventilation openings; sound attenuation from the station to nearby noise-sensitive areas; the manufacturer's name, the model number, the performance rating; and a description of each noise source and noise control component to be employed at the proposed compressor station. For proposed compressors the initial filing must include at least the proposed horsepower, type of compression, and energy source for the compressor.

* * * * *

21. In Appendix A to Part 380, paragraph 6 of Resource Report 3, paragraph 9 of Resource Report 8, and paragraph 4 of Resource Report 9 are revised to read as follows:

Appendix A to Part 380—Minimum Filing Requirements for Environmental Reports Under the Natural Gas Act

* * * * *

Resource Report 3—Vegetation and Wildlife

* * * * *

6. Identify all federally listed or proposed endangered or threatened species that potentially occur in the vicinity of the project and discuss the results of the consultations with other agencies. Include survey reports as specified in § 380.12(e)(5).

* * * * *

Resource Report 8—Land Use, Recreation and Aesthetics

* * * * *

9. Identify all facilities that would be within designated coastal zone management areas. Provide a consistency determination or evidence that a request for a consistency determination has been filed with the appropriate state agency. ((§ 380.12(j)(4 & 7))

* * * * *

Resource Report 9—Air and Noise Quality

* * * * *

4. Describe the existing compressor units at each station where new, additional, or modified compressor units are proposed, including the manufacturer, model number, and horsepower of the compressor units. For proposed new, additional, or modified compressor units include the horsepower, type, and energy source. (§ 380.12(k)(4)).

* * * * *

PART 385—RULES OF PRACTICE AND PROCEDURE

22. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 835.2001 [Amended]

23. In § 385.2001, the reference in paragraph (a)(1)(i) to ''825 North Capitol Street'' is removed and a reference to ''888 First Street N.E.'' is added in its place.

[FR Doc. 99–25783 Filed 10–6–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

22 CFR Part 171

BROADCASTING BOARD OF GOVERNORS

22 CFR Chapter V, and 48 CFR Chapter 19

[Public Notice # 3127]

Repeal, Redesignation and Amendment of the United States Information Agency's Former Regulations

AGENCY: Department of State and Broadcasting Board of Governors.

ACTION: Final rule.

SUMMARY: Pursuant to the consolidation of the United States Information Agency (''USIA'') and the Department of State as mandated by the Foreign Affairs Agencies Consolidation Act of 1998, this rule amends USIA's former public regulations in the Code of Federal Regulations (CFR). Some of these regulations are repealed, some are revised and amended to apply only to the Department of State, and some are amended to apply only to the Broadcasting Board of Governors (''BBG''). Chapter V of 22 CFR is amended to cover only the BBG.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Ohlhausen (202)–619–6972; Tom Heinemann (202)–647–5154.

SUPPLEMENTARY INFORMATION: This rule amends USIA's former public regulations, which appear at chapter V of 22 CFR and chapter 19 of 48 CFR, in order to avoid having duplicative regulations after USIA is consolidated with the Department of State pursuant to the Foreign Affairs Agencies Consolidation Act of 1998, Public Law 105–277. It also clarifies which of USIA's regulations will apply to the newly-created Broadcasting Board of Governors.

The rule makes several types of changes. First, chapter V is retitled ''Broadcasting Board of Governors'' and subchapter G of Chapter I (State Department regulations) is retitled ''Public Diplomacy and Exchanges.'' Second, parts that will apply only to the BBG are amended to limit their application in this manner. Third, several parts of 22 CFR chapter V that are no longer necessary for either the State Department or BBG are removed. Finally, certain sections are amended and redesignated as State Department regulations. These actions shall take effect in accordance with the savings provisions at Section 1323(e)(5) and 1327(a)–(f) of the Act.

This rule involves agency management functions and, therefore, is not subject to the procedures required by 5 U.S.C. 553 and 801. It is also exempt from review under Executive Order 12866 but has been reviewed internally by State and USIA to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

List of Subjects

22 CFR Part 61

Education, Imports, Exports, Trade agreements, Audio visual material.

22 CFR Part 62

Cultural exchange programs.

22 CFR Part 63

Cultural exchange programs.

22 CFR Part 64

Cultural exchange programs.

22 CFR Part 65

Cultural exchange programs, Education.

22 CFR Part 66

Freedom of information.

22 CFR Part 67

Organization and functions.

22 CFR Part 171

Freedom of information.

22 CFR Part 500

Conflict of interest.

22 CFR Part 501

Foreign service.

22 CFR Part 502

Education, Imports, Exports, Trade agreements, Audio visual material.

22 CFR Part 503

Freedom of information.

22 CFR Part 504

Organization and functions (Government Agencies).

22 CFR Part 505

Privacy.

22 CFR Part 506

Government employees.

22 CFR Part 510

Administrative practice and procedure.

22 CFR Part 511

Claims.

22 CFR Part 512

Administrative practice and procedure, Debt, Claims.

22 CFR Part 513

Administrative practice and procedure, Courts, Government employees.

22 CFR Part 514

Cultural exchange programs.

22 CFR Part 515

Cultural exchange programs.

22 CFR Part 516

Cultural exchange programs, Government employees.

22 CFR Part 517

Cultural exchange programs, Education.

22 CFR Part 518

Accounting, Audit requirements, Grant programs, Reporting and record-keeping requirements, Non-profit organizations.

22 CFR Part 519

Contract programs, Grant programs, Loan programs, Lobbying.

22 CFR Part 521

Administrative practice and procedure, Claims, Fraud, Penalties.

22 CFR Part 525

Administrative practice and procedure, Conflicts of interest.

22 CFR Part 526

Freedom of information.

22 CFR Part 527

Organization and functions.

22 CFR Part 530

Administrative practice and procedures, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

48 CFR Parts 1901 Through 1953

Administrative practice and procedure, Contract programs.

Accordingly, for the reasons set forth above, effective October 1, 1999, pursuant to the Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, 112 Stat. 2681–761, Titles 22 and 48 of the Code of Federal Regulations is amended as follows:

TITLE 22—[AMENDED]

I. Title 22 of the Code of Federal Regulations is amended as follows:

CHAPTER I—DEPARTMENT OF STATE

SUBCHAPTER C—FEES AND FUNDS

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority for part 22 is revised to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 et seq.; E.O. 10718, 22 FR 4632, 3 CFR 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1996–1970 Comp., 570.

1a. Section 22.1 is amended by adding item 72 to read as follows:

§ 22.1 Schedule of Fees.

Item No.	Fee
* * * * *	
72. Fee for Exchange Waiver Review	$136.00

SUBCHAPTER G—PUBLIC DIPLOMACY AND EXCHANGES

2. Subchapter G is added with a heading to read as set forth above.

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

3. The authority citation for Part 171 is revised to read as follows:

Authority: 5 U.S.C. 551 *et seq.*, 552, 552a; 5 U.S.C. App. 201; Pub. L. 105–277, 112 Stat. 2681 *et seq.* E.O. 12600, 52 FR 19825, 3 CFR, 1995 Comp., p. 333.

4. Section 171.11 is amended by removing ''and'' in the last sentence of paragraph (a)(3) before ''records subject to section 102(d) of the National Security Act'' and adding the following at the end of the sentence:

§ 171.11 Exemptions.

(a) * * *

(3) * * * and records subject to section 501 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended).

* * * * *

CHAPTER V—BROADCASTING BOARD OF GOVERNORS

5. The heading of Chapter V is revised to read as set forth above.

PART 500—[REMOVED]

6. Part 500 is removed.

PART 501—APPOINTMENT OF FOREIGN SERVICE OFFICERS

7. In part 501:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 502—[REDESIGNATED AS PART 61]

8. Part 502 is transferred to chapter I and redesignated as Part 61 in subchapter G.

9. In redesignated part 61:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Department of State'';

b. All references to ''Agency'' are revised to read ''Department''; and

c. All references to ''Director'' are revised to read ''Secretary of State''.

d. In redesignated § 61.9, remove the symbol ''GC/A'' and add, in its place, the symbol ''ECA/GCV—Attestation Officer''.

PART 503—AVAILABILITY OF RECORDS

10. In part 503:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Department''.

PART 504—[REMOVED]

11. Part 504 is removed.

PART 505—PRIVACY ACT POLICIES AND PROCEDURES

12. In part 505:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 506—PART-TIME CAREER EMPLOYMENT PROGRAM

13. In part 506:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 510—SERVICE OF PROCESS

14. In part 510:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 511—FEDERAL TORT CLAIMS

15. In part 511:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 512—COLLECTION OF DEBTS UNDER THE DEBT COLLECTION ACT OF 1982

16. In part 512:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 513—GOVERNMENT DEBARMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

17. In part 513:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''the Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 514—[AMENDED]

§ 514.44 [Redesignated as § 41.63]

18. Section 514.44 is transferred to chapter I and redesignated as § 41.63 in subpart G.

§ 514.90 [Amended]

19. Section 514.90 is amended by removing and reserving paragraph (b).

PART 514—[REDESIGNATED AS PART 62]

20. The remainder of part 514 is transferred to chapter I and redesignated as part 62 in new subchapter G.

21. In redesignated part 62:

a. All references to ''USIA'', ''the United States Information Agency'', or ''agency'' are revised to read ''Department of State'';

b. All references to ''Director of the United States Information Agency'' or ''Director'' are revised to read ''Secretary of State'';

c. All references to ''General Counsel'' are revised to read ''Bureau of Consular Affairs''; and

d. All references to ''Board'' or ''Branch'' are revised to read ''Division''.

PART 41—[AMENDED]

22. The authority for Part 41 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

22a. Redesignated § 41.63 is amended by revising the heading of paragraph (g) and the introductory text of paragraph (g)(1), the first sentence of paragraph (g)(3), and the first and last sentences of paragraph (g)(4) to read as follows:

§ 41.63 Two-year home-country physical presence requirement.

* * * * *

(g) The Exchange Visitor Waiver Review Division.

(1) The Exchange Visitor Waiver Review Division (''Division'') shall consist of Department of State positions equivalent to the following positions: * * *.

* * * * *

(3) The State Department official equivalent to the Associate Director of the Bureau of Educational and Cultural Affairs, or his or her designee, shall serve as Division Chairman. * * *

(4) Cases will be referred to the Division at the discretion of the Chief, Waiver Review Division, of the Department's Office of Exchange Visitor Program Services. * * * The Chief, Waiver Review Division, or his or her designee may, at the Chairman's discretion, appear and present facts related to the case but shall not participate in Division deliberations.

* * * * *

PART 62—[AMENDED]

23. The authority for redesignated part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(A)(15(j), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Pub. L. 105–277, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978, 3 CFR, 1978 Comp. p. 168.

23a. Redesignated § 62.50 is amended by revising the introductory language in paragraph (h)(1) to read as follows:

§ 62.50 Sanctions.

* * * * *

(h) The Exchange Visitor Program Designation, Suspension, and Revocation Board. (1) The Exchange Visitor Program Designation, Suspension, and Revocation Board (''Board'') shall consist of Department of State positions equivalent to the following positions:

* * * * *

PART 515—[REDESIGNATED AS PART 63]

24. Part 515 is transferred to chapter I and redesignated as Part 63 in new subchapter G.

25. In redesignated part 63:

a. All references to ''USIA'' or ''the United States Information Agency'' are revised to read ''Department of State''; and

b. All references to ''Director'' are revised to read ''Secretary of State''.

PART 516—[REDESIGNATED AS PART 64]

26. Part 516 is transferred to chapter I and redesignated as Part 64 in new subchapter G.

27. In redesignated part 64:

a. All references to ''USIA,'' ''United States Information Agency,'' or ''Agency'' are revised to read ''Department of State''; and

b. All references to ''Director'' are revised to read ''Secretary of State''.

c. The authority for redesignated part 64 is revised to read as follows:

Authority: Sec. 108A (Pub. L. 94–350, 90 Stat. 823) added to the Mutual Educational and Cultural Exchange Act, as amended, 75 Stat. 527–28, 22 U.S.C. 2451 *et seq.;* and under Executive Orders 11034 and 12048, as amended; Pub. L. 105–277, 112 Stat. 2681 *et seq.;* Reorganization Plan No. 2 of 1977 and the Continuity Order (Continuity of Operations) of April 1, 1978 (43 FR 15371).

28a. Redesignated § 64.8 is amended by revising the last sentence to read as follows:

§ 64.8 Obligation of Employee to Advise Agency

* * * In the case of the Department, an employee shall advise the DAEO who may, after consultation with appropriate officials of the Department, furnish a ''no objection'' statement.

PART 517—[REDESIGNATED AS PART 65]

29. Part 517 is transferred to Chapter I and redesignated as Part 65 in new subchapter G.

30. In redesignated part 65:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Department of State''; and

b. All references to ''Director'' are revised to read ''Secretary of State''.

PART 521—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

31. In part 521:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''the Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

PART 525—[REMOVED]

32. Part 525 is removed.

PART 526—[REDESIGNATED AS PART 66]

33. Part 526 is transferred to Chapter I and redesignated as Part 66 in new subchapter G.

34. In redesignated part 66:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''Department of State''; and

b. All references to ''Director'' are revised to read ''Secretary of State.''

c. The authority citation for redesignated part 66 is revised to read as follows:

Authority: 22 U.S.C. 4411 *et seq.;* Pub. L. 99–570, Secs. 1801–1804, 100 Stat. 3207–48 (1986); Pub. L. 105–277, 112 Stat. 2681 *et seq.*

35. Redesignated § 66.3 is amended by revising paragraph (a) to read as follows:

§ 66.3 Places at which forms and instructions for use by the public may be obtained.

(a) All forms and instructions pertaining to procedures under FOIA may be obtained from the FOIA officer of the National Endowment for Democracy, 1101 15th St., NW; Suite 700, Washington, D.C. 20005–5000.

* * * * *

36. Redesignated § 66.5 is amended by revising the first sentence of paragraph (a)(1) and paragraph (a)(2) to read as follows:

§ 66.5 Availability of NED records.

* * * * *

(a) Requests for records—How made and addressed.

(1) Requesters seeking access to NED records under FOIA should direct all requests in writing to: Freedom of Information Act Officer, National Endowment for Democracy, 1101 15th St., NW; Suite 700, Washington, D.C. 20005–5000. * * *

(2) Appeals of denials of initial requests must be addressed to NED in the same manner or to the Department of State pursuant to the procedures set forth at part 171 of this Title, with the addition of the word ''APPEAL'' preceding the address on the envelope. Appeals addressed directly to the Department of State will not be deemed to have been received by NED for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(1) until actually

received by NED. The Department of State shall forward any appeal received by it to NED within 2 working days from the actual day of receipt by the Department of State.

* * * * *

PART 527—[REDESIGNATED AS PART 67]

37. Part 527 is transferred to Chapter I and redesignated as Part 67 in new subchapter G.

38. The authority citation for redesignated part 67 is revised to read as follows:

Authority: 22 U.S.C. 4411 et seq.; Title II, Sec. 210, Pub. L. 99–93, 99 Stat. 431 (22 U.S.C. 4415); Pub. L. 105–277, 112 Stat. 2681 *et seq.*

38a. Redesignated § 67.2 is amended by revising the first and last sentence of paragraph (a) and the second sentence of paragraph (c) to read as follows:

§ 67.2 Board of Directors.

(a) NED is governed by a bipartisan board of Directors of not fewer than thirteen and not more than twenty-five members reflecting the diversity of American society. * * * A current list of members of the Board of Directors and a schedule of upcoming meetings is available from NED's office at 1101 15th Street, NW; Suite 700, Washington, DC 20005–5000.

* * * * *

(c) * * * All grants made by the corporation shall be by a two-thirds vote of those voting at a meeting at which a quorum is present. Notwithstanding the foregoing, the Board may from time to time adopt, upon a two-thirds vote of those voting at a meeting at which a quorum is present, procedures to address emergency funding requests between meetings of the Board. * * *

39. Redesignated § 67.4 is amended by revising the second sentence of paragraph (i) to read as follows:

§ 67.4 Description of functions and procedures.

* * * * *

(i) * * * Letters of inquiry and formal proposals should be submitted to: Director of Program, National Endowment for Democracy 1101 15th Street, NW, Suite 700, Washington, DC 20005–5000.

PART 530—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES INFORMATION AGENCY

40. In Part 530:

a. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''the Broadcasting Board of Governors''; and

b. All references to ''Agency'' are revised to read ''Board''.

TITLE 48—[AMENDED]

II. Title 48 of the Code of Federal Regulations is amended as follows:

CHAPTER 19—BROADCASTING BOARD OF GOVERNORS

1. In Chapter 19:

a. The chapter heading is revised as set forth above.

b. All references to ''USIA'' or ''United States Information Agency'' are revised to read ''the Broadcasting Board of Governors''; and

c. All references to ''Agency'' are revised to read ''Board''.

Dated: October 1, 1999.

John Lindburg,

Acting Executive Director, Broadcasting Board of Governors.

Dated: October 1, 1999.

Patrick F. Kennedy,

Assistant Secretary for Administration, Department of State.

[FR Doc. 99–26081 Filed 10–6–99; 8:45 am]

BILLING CODE 4710–10–U

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 516

RIN 3141–AA20

Administrative Practice and Procedure; Testimony; Information; Response to Subpoena

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission issues a final rule describing the duties of its personnel and former personnel with respect to litigation involving the National Indian Gaming Commission or the official responsibilities of National Indian Gaming Commission employees.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard B. Schiff, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20036; telephone: 202–632–7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Because the National Indian Gaming Commission is regularly associated with a variety of matters which have the potential for resulting in litigation, the National Indian Gaming Commission has a requirement for regulations describing the duties of its personnel with respect to such litigation. On July 1, 1999, the Commission proposed such regulations. **Federal Register**: July 15, 1999 (Volume 64, Number 135) page 38164–38165. The Commission requested comments on those proposed regulations. Below is the Commission's analysis of the comments received during the comment period and the text of the final regulations.

General Comments

A commenter pointed out that, although the **SUPPLEMENTARY INFORMATION** published with the Proposed Rule had noted that the regulations were intended to be the Commission's ''Touhy regulations,'' and cited *United States Ex. Rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), the statutory basis for Touhy regulations, 5 U.S.C. 301, was omitted. The Final Rule corrects this oversight.

Concern was expressed by a commenter that application of these rules to litigation in which the National Indian Gaming Commission is a party would be inconsistent with the Federal Rules of Civil Procedure. The Commission considers it self-evident that it may not relieve itself of its obligations as a litigant by promulgating a housekeeping regulation, and that there will be circumstances under which the Federal Rules of Civil Procedure rather than these regulations will guide the actions of Commission personnel. Nonetheless, the Commission, like any public or private party to litigation, may protect itself against unauthorized disclosures of information, and, even when the Commission is a party to the proceeding, it has authority to prescribe regulations for the conduct of its employees relating to disclosure of information to the opposing party.

Comment was received which referenced 25 U.S.C. 2716(a) and the Trade Secrets Act, 18 U.S.C. 1905, and expressed the view that the regulation should address concerns of gaming tribes respecting protection of confidential information submitted to the National Indian Gaming Commission by such tribes. The comment suggested that the Final Rule should: (a) Restrict disclosure of such information in court, and (b) Require notification to tribes in the event third parties request such information.

The Commission is issuing these regulations to guide the conduct of Commission personnel and former personnel with respect to requests or demands for information that are

litigation-related or otherwise arise out of judicial, administrative or other legal proceedings. The regulations do not, and under 5 U.S.C. 301, could not, provide a substantive basis for limiting the availability of Commission records. In the context, however, of the decision of the Chairman or General Counsel to allow a person to whom the regulation applies to comply with a subpoena or other demand, the Commission agrees that the interests of the submitter in confidential material must be considered. See the discussion below of Section 516.2.

516.1 What does this part cover?

One commenter noted that the phrase ''litigation-related,'' standing alone, made applicability of the proposed rule uncertain with respect to requests or demands such as those which might originate, for example, in state grand juries or licensing boards. The Commission agrees and has modified the language of this part to provide clarification.

516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

A commenter noted that the term ''public interest,'' the basis on which the Chairman or General Counsel determines whether to grant a request for a statement or testimony under this section, or for documents under section 516.3, is not defined.

The Commission considers the term ''public interest'' to be sufficiently precise in this context. Depending upon the circumstances of the request, an official making the ''public interest'' determination might look at any number of factors, including such matters as: whether allowing the statement or testimony would serve the goals of the regulation; whether allowing the statement or testimony is necessary to prevent a miscarriage of justice; and whether the Commission or the United States has any important interests which may be affected by the outcome of the legal proceeding. With respect to confidential commercial or proprietary information, the determination of the Chairman or General Counsel will also include consideration of the views of the submitter, consistent with the policy embodied in Executive Order 12600, June 23, 1987, and 25 CFR 517.5. Recognizing that, except when the Commission is a party to the litigation, the decision to deny a request for testimony or documents under this part may be subjected to judicial review under the Administrative Procedure Act, 5 U.S.C. 702, a clear articulation of the basis for such a determination will be made routinely.

516.3 When may a person to whom this part applies produce records?

A comment identified a discrepancy between this section and section 516.2 in that the two sections, as proposed, did not provide a parallel process for the determination to respond to a subpoena ad testificandum, on the one hand, and the determination to respond to a subpoena duces tecum, on the other. The Final Rule modifies this section to eliminate the discrepancy.

516.4 How are records certified or authenticated?

Comment was received suggesting that certification as to the authenticity of copies be made mandatory by substituting the word ''shall'' for the word ''may.''

While accommodation of such requests will be the norm, the Commission prefers non-mandatory language, thereby allowing a flexible response in the event of receipt of a certification request which is unreasonable or unnecessarily burdensome.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

National Environmental Policy Act

The Commission has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 516

Administrative practice and procedure, Gambling, Indians—Lands, Reporting and record keeping requirements.

For the reasons stated in the preamble, the Commission amends 25 CFR chapter III by adding a new Part 516 to read as follows:

PART 516—TESTIMONY OF COMMISSIONERS AND EMPLOYEES AND FORMER COMMISSIONERS AND FORMER EMPLOYEES RESPECTING OFFICIAL DUTIES; RESPONSE TO SUBPOENA

Sec.

Authority: 5 U.S.C. 301; 25 U.S.C. 2706; 25 U.S.C. 2716(a); 18 U.S.C. 1905.

§ 516.1 What is the purpose of this part and to whom does it apply?

(a) The purpose of this part is to promulgate regulations regarding the release of official National Indian Gaming Commission information and provision of testimony by National Indian Gaming Commission personnel with respect to litigation or potential litigation and to prescribe conduct on the part of National Indian Gaming Commission personnel in response to a litigation-related request or demand.

(b) This part applies to requests or demands that are litigation-related or otherwise arise out of judicial, administrative or other legal proceedings (including subpoena, order or other demand) for interview, testimony (including by deposition) or other statement, or for production of documents relating to the business of the National Indian Gaming Commission, whether or not the National Indian Gaming Commission or the United States is a party to the litigation. It does not, however, apply to document requests covered by 25 CFR parts 515 and 517.

(c) To the extent the request or demand seeks official information or documents, the provisions of this part are applicable to Commissioners, employees, and former Commissioners and former employees, of the National Indian Gaming Commission.

§ 516.2 When may a person to whom this part applies give testimony, make a statement or submit to interview?

(a) No person to whom this part applies, except as authorized by the Chairman or the General Counsel pursuant to this regulation, shall provide testimony, make a statement or submit to interview.

(b) Whenever a subpoena commanding the giving of any testimony has been lawfully served upon a person to whom this part

applies, such individual shall, unless otherwise authorized by the Chairman or the General Counsel, appear in response thereto and respectfully decline to testify on the grounds that it is prohibited by this regulation.

(c) A person who desires testimony or other statement from any person to whom this part applies may make written request therefor, verified by oath, directed to the Chairman setting forth his or her interest in the matter to be disclosed and designating the use to which such statement or testimony will be put in the event of compliance with such request: provided, that a written request therefor by an official of any federal, state or tribal entity, acting in his or her official capacity need not be verified by oath. If it is determined by the Chairman or the General Counsel that such statement or testimony will be in the public interest, the request may be granted. Where a request for a statement or testimony is granted, one or more persons to whom this part applies may be authorized or designated to appear and testify or give a statement with respect thereto.

§ 516.3 When may a person to whom this part applies produce records?

(a) Any request for records of the National Indian Gaming Commission shall be handled pursuant to the procedures established in 25 CFR parts 515 and 517 and shall comply with the rules governing public disclosure as provided in 25 CFR parts 515 and 517.

(b) Whenever a subpoena duces tecum commanding the production of any record has been lawfully served upon a person to whom this part applies, such person shall forward the subpoena to the General Counsel. If commanded to appear in response to any such subpoena, a person to whom this part applies shall respectfully decline to produce the record on the ground that production is prohibited by this part and state that the production of the record(s) of the National Indian Gaming Commission is a matter to be determined by the Chairman or the General Counsel.

§ 516.4 How are records certified or authenticated?

(a) Upon request, the person having custody and responsibility for maintenance of records which are to be released under this part or 25 CFR parts 515 or 517 may certify the authenticity of copies of records that are requested to be provided in such format.

(b) A request for certified copies of records or for authentication of copies of records shall be sent to the National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005, Attention: Freedom of Information Act Officer.

Authority and Signature

This proposed rule was prepared under the direction of the Commissioners, National Indian Gaming Commission, 1441 L St. NW, Suite 9100, Washington DC 20005.

Signed at Washington, DC this 28th day of September, 1999.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

[FR Doc. 99–25747 Filed 10–6–99; 8:45 am]

BILLING CODE 7565–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

RIN 3150–AF81

Respiratory Protection and Controls to Restrict Internal Exposures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the use of respiratory protection and other controls to restrict intake of radioactive material. The amendments make these regulations more consistent with the philosophy of controlling the sum of internal and external radiation exposure, reflect current guidance on respiratory protection from the American National Standards Institute (ANSI), are consistent with recently effective revisions to Occupational Safety and Health Administration (OSHA's) respiratory protection rule, and make NRC requirements for radiological protection less prescriptive while reducing unnecessary regulatory burden without reducing worker protection. The amendments provide greater assurance that worker dose will be maintained as low as is reasonably achievable (ALARA) and that recent technological advances in respiratory protection equipment and procedures are reflected in NRC regulations and clearly approved for use by licensees.

EFFECTIVE DATE: February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Alan K. Roecklein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3883; email AKR@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The NRC published a major revision of 10 CFR Part 20, ''Standards for Protection Against Radiation,'' on May 21, 1991 (56 FR 23360). Although the NRC was aware that certain provisions of Subpart H and Appendix A to Part 20 were out of date and did not reflect new technology in respiratory devices and procedures, the NRC made minimal changes in the May 21, 1991 final rule. The NRC was aware that an ANSI standard was being prepared that was expected to provide state-of-the-art guidance on acceptable respiratory protection devices and procedures. Therefore, the NRC decided to address further revisions to Subpart H and Appendix A to Part 20 when the ANSI guidance was complete.

In response to public comments on the proposed 10 CFR Part 20, the NRC made several changes to Subpart H in the May 21, 1991, final rule to make it consistent with the new philosophy and science underlying the new Part 20. The new Subpart H required that the practice of ALARA apply to the sum of internal and external dose; addressed correction of both high and low initial intake estimates if subsequent, more accurate measurements gave different results; and clarified that a respiratory protection program consistent with Subpart H is required whenever respirators are used to limit intakes of radioactive material.

After 10 CFR Part 20 was revised, the American National Standards Institute approved publication of ANSI Z88.2–1992, ''American National Standard for Respiratory Protection''. This document provides an authoritative consensus on major elements of an acceptable respiratory protection program, including guidance on respirator selection, training, fit testing, and assigned protection factors (APF). The NRC is amending Subpart H of Part 20 to make the regulations less prescriptive without reducing worker protection. This rule is consistent with the 1992 ANSI guidance and is consistent with new regulations on respiratory protection published by the Occupational Safety and Health Administration (OSHA).

II. Analysis of Public Comments and Staff Response

The proposed rule was published for public comment in the **Federal Register** July 17, 1998 (63 FR 38511). By mid-November seventeen letters had been received from the public providing comments on the rule. One letter was received from an Agreement State and

eight letters provided comments on the draft revision to Regulatory Guide 8.15.

This section discusses the comments received, how the NRC staff was able to incorporate many of the comments into the final rule, and if not, why a comment was not accepted. Numerous suggestions for changes were acceptable to the NRC staff consistent with maintaining a comprehensive set of regulations for the use of respiratory protection against airborne radioactive materials, adequate to assure health and safety of workers at NRC-licensed facilities. Every effort was made to retain the burden reduction provided by the amendments in the proposed rule and to comply with the Commission's intent that regulations be risk informed and performance based. Because many commenters addressed the same issues, this analysis will address all comments but specific commenters will not be identified.

Several commenters suggested endorsing the regulations on respirator use published recently by the Department of Labor, Occupational Safety and Health Administration (OSHA), 29 CFR Parts 1910 and 1926. The proposed NRC regulations were in most respects consistent with those adopted by OSHA. Because OSHA's, as well as NRC's, regulations on respirator use may be applicable to facilities that have both radiological and non-radiological hazards, additional changes have been made to the NRC rule to make it even more consistent with OSHA requirements. However, the suggestion to rely entirely on the published OSHA rules is not possible for the following reasons.

The Atomic Energy Act (AEA) gives the NRC the statutory responsibility to protect public health and safety, which includes worker radiological health and safety, in the use of source, byproduct, and special nuclear materials. The Occupational Safety and Health Act (OSH) Act provides that for working conditions where another Federal agency exercises statutory authority to protect worker health and safety, the OSH Act is inapplicable. Therefore in implementing its statutory authority, the NRC preempts the application of the OSH Act for those working conditions involving radioactive materials.

In 1988, the NRC and OSHA signed a Memorandum of Understanding (MOU) to make jurisdictional responsibilities at NRC licensed facilities clear. Three areas of interest are intended to be regulated by the NRC. These are:

—Radiation risk produced by radioactive materials.

—Chemical risk produced by radioactive materials.

—Plant conditions that affect the safety of radioactive materials and thus present an increased radiation risk to workers.

The NRC cannot meet its responsibility to protect worker and public radiological safety in these areas without a comprehensive body of regulations to guide inspection and enforcement of essential safety issues specifically addressing radiological hazards.

In addition, the NRC regulation includes the Assigned Protection Factors (APFs) recommended by the American National Standards Institute (ANSI) with some modifications. Because, in radiological applications, using APFs to generate an estimate of intake of radioactive materials is an acceptable method to demonstrate compliance with NRC dose limits, APFs must be included in the regulation. However, OSHA rules do not specify APFs because this section of the OSHA rules is still under development.

The NRC regulations include dose limitation for radiation exposure with the concept of keeping total dose As Low As Is Reasonably Achievable (ALARA). OSHA does not address radiation hazards and does not include the ALARA concept.

Finally NRC requirements do make it clear that if an NRC licensee is using respiratory protection to protect workers against non-radiological hazards, the OSHA requirements apply. If the NRC has jurisdiction and is responsible for inspection, the MOU specifies that NRC will inform the licensee and OSHA if the NRC observes an unsafe condition relative to non-radiological hazards. For all of these reasons, NRC believes it must have respiratory protection regulations in place, rather than adopt on OSHA regulations.

Several commenters suggested endorsing ANSI guidance in the regulations such as ANSI Z88.2–1992, ''American National Standard for Respiratory Protection.'' The ANSI standards are viewed by the NRC staff as comprehensive guidelines that if implemented would contribute to an acceptable program. The NRC staff participated in development of the standards. However, the ANSI standard does not specifically address radiological protection. In addition, the ANSI recommendations for general respirator usage are too prescriptive to be incorporated as regulatory requirements given the Commission's intent to promulgate risk-informed and performance-based rules.

With changes to the proposed rule discussed here, 10 CFR Part 20, Subpart H will be consistent in almost all respects with ANSI guidance. The final Regulatory Guide 8.15, ''Acceptable Programs for Respiratory Protection'', will endorse, with some minor exceptions, ANSI Z88.2, 1992, as providing useful guidance for implementing an acceptable respiratory protection program. This is considered by the NRC to be consistent with the National Technology Transfer and Advancement Act of 1995.

Several commenters objected to the NRC proposed change that fit tests could be performed every three years, instead of annually, with supervisory attention to any physiological changes that might suggest more frequent tests. The commenters observed that the NRC proposal was inconsistent with ANSI guidance and the OSHA requirement for annual fit testing. The OSHA requirement for annual fit testing is based on several research studies that showed significant numbers of workers failing to maintain an acceptable level of fit after only 1 year. The NRC staff agrees and has retained the requirement for annual fit testing in the final rule.

Several commenters suggested that disposable respirators (filtering facepieces or dust masks) without elastomeric sealing surfaces and adjustable straps, should have an APF equal to 10 listed in Appendix A to be consistent with ANSI. The final rule does not assign an APF to ''filtering facepieces'' that are not equipped with elastomeric face seals and at least two adjustable straps, unless the licensee can demonstrate a fit factor of at least 100 by use of a quantitative or qualitative, and validated or evaluated fit testing protocol. If the device can be fit tested to demonstrate a fit factor of at least 100 then an APF of 10 may be used. Although stated differently, this is essentially the condition that ANSI would require of disposables. The NRC rule has the benefit of calling attention to the possibility that some devices, such as dust masks, may not retain good fit under conditions of use in the work place. This provision also permits the use of dust masks and other disposables, if requested by a worker, without the requirement to perform medical exams or fit tests. Fit testing is only required if an APF is assigned, or if credit is taken for use of the device in estimating intake or dose, suggesting that the intent is to limit intake of radioactive material.

Three respirator types operating in demand or in demand, recirculating mode were given APFs of 5 in the proposed rule. This was in an effort to discourage their use by mistake in high concentration areas. ANSI gives these devices APFs equal to 100. Consistent

with ANSI and in response to public comment, the NRC staff has changed these APFs to 100.

It was suggested that Appendix A could be put into Regulatory Guide 8.15 so that changes could be made more easily as ANSI revised APFs. This suggestion is not accepted by the NRC staff because APFs may be used to generate estimates of dose of record from the intake of radioactive material and as such should be regulatory requirements. Regulatory Guides provide descriptions of acceptable programs, are guidance only, and cannot be enforced unless a licensee commits to use specific regulatory guides in its license. Although many materials licensees and some nuclear power plant licensees do commit to use specific regulatory guidance, thus making the guidance enforceable, it is not required that all licensees incorporate regulatory guides.

In addition, APFs, as established by ANSI, are considered to be the maximum allowable measure of protection associated with each respirator type and mode of operation. These measures are used to select a licensee's inventory of available respiratory protection devices as well as to select respirators for a particular job. The NRC believes it is important to worker safety that APFs not be flexible as they might be if they were contained only in regulatory guidance.

During the information collection phase of this rulemaking, the NRC staff was advised by several licensees that they would hesitate to use a device unless it were specifically ''permitted'' in the NRC regulations. Appendix A is needed in the regulation to specify those respiratory devices that are permitted to be used in an NRC licensed facility. For example, quarter facepieces although approved by NIOSH and ANSI, are not permitted for use in NRC licensed facilities. On the other hand, air-supplied suits, that are not tested or certified by NIOSH or listed in ANSI, are in Appendix A to Part 20 thus permitting their use by licensees.

Several commenters suggested that the NRC terms and definitions should be consistent with those used by OSHA. The NRC staff agrees. Several OSHA terms and definitions have been added to 10 CFR Part 20 in this final rule and several proposed NRC definitions have been amended to be more consistent with OSHA terms.

A commenter observed that § 20.1703(c)(3) requires that respirators be tested for operability prior to each use but that such tests (user seal checks) are not quantitative and there is no requirement to document the check. It was suggested that this requirement be deleted. The NRC staff does not intend that user seal checks (fit checks) be quantitative nor that they be documented. User seal checks have been required by the NRC since 1979 and are well known to the industry. Licensee training programs describe the procedures and the procedures are subject to periodic licensee and NRC audits. The need to perform a user seal check (fit check) prior to each use is considered an essential safety procedure, consistent with industry practice and ANSI guidance. This requirement is retained.

A commenter stated that § 20.1703(c)(2) requires the use of bioassays during respirator use in order to evaluate actual intakes and that for certain radionuclides, such as W- and Y-class forms of thorium and Y-class forms of uranium, bioassay techniques are relatively insensitive. The NRC staff observes that § 20.1204, ''Determination of internal exposure,'' permits the use of air sampling, bioassays *or* combinations of these measurements to assess dose from the intake of radioactive materials. The final § 20.1703(c)(2) states that a licensee shall implement and maintain a respiratory protection program that includes surveys and bioassays, as necessary, to evaluate actual intakes. The intent of this provision is to identify elements required to be addressed in the program description. This section does not replace § 20.1204 which permits methods other than bioassay to be used to determine dose from intake.

A commenter observed that under the proposed rule, if a licensee determined that a work situation did not require the use of respirators but a worker requested one, then a respiratory protection program would be required to be in effect. This is true for any respirator that has been assigned an APF in Appendix A. However, the rule now recognizes the use of disposable filtering facepieces (dust masks) without an APF. If no credit is to be taken for their use then program elements such as a medical exam and fit test are not required. Other program elements such as minimal training on limitations of the devices and correct methods of use are required.

A comment was made that the final rule should establish the extent to which emergency planning efforts must incorporate the programmatic requirement of 10 CFR 20.1703. 10 CFR Part 20 does not directly address emergency situations but provides programmatic requirements for normal operations. However, § 20.1001 notes that ''* * * nothing in this part shall be construed as limiting actions that may be necessary to protect health and safety.'' This suggests that in the event of an emergency, such as a major release or spill of radioactive material, conditions would need to be assessed and the need for respiratory protection determined. Licensees should determine whether or not an emergency situation could reasonably be expected to arise that would require the establishment of a respiratory protection program, and how extensive that program would need to be. For nuclear power plants, § 50.47 (b)(8) requires ''adequate * * * equipment to support the emergency response.'' This includes respiratory protection equipment that would be needed in an emergency and a program for its use.

In NUREG–6204, Question and Answers Based on Revised 10 CFR Part 20, a question was posed as to whether the requirements of 10 CFR 20.1703 apply to respiratory protection equipment that is to be used only in emergencies. The NRC staff position is that if the equipment is to be used to limit intakes of radioactive material, this requirement applies. Also, footnote i to the new Appendix A makes it clear that full facepiece, Self-Contained-Breathing-Apparatus (SCBA) operating in pressure demand, or positive pressure recirculating mode may be used as an emergency device in unknown concentrations for protection against inhalation hazards. If a licensee determined that there was sufficient likelihood of an emergency situation, including significant airborne radioactive material, to justify the maintenance of emergency use SCBA, then a program would be necessary to assure the safe use of the equipment should it be needed. The NRC staff believes that any respiratory protection program that meets Part 20 requirements should provide a good basis for respirator use in emergency situations. Further guidance is provided in Regulatory Guide 8.15.

A commenter stated that § 20.1703(b) requires application to the Commission for approval to use respiratory devices not tested or certified by NIOSH. It was suggested that this application would not be necessary if the respirator were used in a situation where no protection factor was needed. The program elements described in § 20.1703 come into effect ''* * * if the licensee assigns or permits the use of respiratory protection equipment to *limit the intake* of radioactive material.'' The NRC clarified the statement of considerations to help define ''limit intake.'' In effect, if a licensee determines that respiratory protection is not required to limit intake of radioactive material and a respirator

is used for some other reason, then the § 20.1703 conditions are not applicable. However, in this case, other regulations would govern the use of respirators. For example, if a worker requests a respirator that will not be used to limit intakes of radioactive material, then OSHA or State requirements would come into play. For example, OSHA requirements for the voluntary use of disposable filtering facepieces (dust masks) would be little more than brief instruction on the limitations of the device and correct methods of use. NRC, as well as OSHA requirements for the use of tight-fitting, half or full-facepiece respirators are more extensive, including medical evaluation.

A suggestion was made that § 20.1703(d) should include instructing a worker that a respirator could be removed in any situation where the user judges that his or her health is at risk due to physical or psychological stress caused by use of the respirator. The NRC staff believes the present language in this section and guidance in Reg. Guide 8.15, is adequate to assure that a worker knows when and how to secure relief from respirator-induced stress.

A commenter requested that provisions be added to allow the use of combination full facepiece, pressure demand, supplied air respirators with auxiliary self-contained air supply for use during emergency entry into an unassessed environment. The NRC staff intends that Appendix A Section III, Combination Respirators, include any devices or combinations of devices as approved by NIOSH in 42 CFR Part 84.70. Regulatory Guide 8.15 provides further guidance on the use of combination respirators. The NRC staff does not believe that any change is needed in the regulation to permit (and continue to allow) the use of these approved devices.

A commenter questioned the statement in footnote e of Appendix A that ''* * * no distinction is made * * * between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the face piece (e.g., disposable or reusable disposable).'' The commenter observed that there is no assurance that a filtering facepiece would provide the same degree of protection as a respirator equipped with an elastomeric facepiece. The NRC staff agrees with this statement and has assigned a protection factor of 10 only to devices having elastomeric face sealing properties and two or more adjustable straps. Filtering facepieces not having these design features are the first entry in Appendix A and are not given an APF.

A commenter observed that proposed footnote e would permit the use of filtering facepiece respirators (dust masks) without medical screening or fit testing. The footnote also provides that if a licensee can demonstrate a fit factor of at least 100 using an acceptable fit test protocol, then an APF of 10 can be used. At question is whether the medical screening becomes necessary if the device qualifies for an APF. The waiver of medical screening in the new footnote d is based on the fact that these devices do not impose physiological stress because they are light weight, do not have a tight seal, and do not contribute significantly to breathing resistance. The use of these devices, such as dust masks, is likely to occur in response to a worker's request for a respirator when the licensee has determined that a respirator is not needed. Under these circumstances, the least burdensome design available should be used. If a filtering facepiece device passes a fit test, and is to be used to limit intake, and an APF greater than 1 is used to estimate intake, then a full program is required including medical screening. This requirement is consistent with the recent OSHA regulations.

A suggestion was made that Appendix A could be clearer with more explanatory text in the table, fewer footnotes, and terminology that tracks OSHA. The NRC staff has revised Appendix A to some extent, by spelling out modes of operation and adopting OSHA terminology whenever possible.

A suggestion was made that Appendix A would be less complicated if there was only one column of APF values. The NRC staff agrees and the APF column for air purifying respirators is now labeled Particulate, and the columns of APFs for atmosphere supplying respirators and combination respirators are now labeled Particulate, Gases, and Vapors.

A commenter observed that footnote a should reference OSHA regulations in addition to 29 CFR 1910. The NRC staff agrees and footnote a in the final rule references Department of Labor regulations. The revised Regulatory Guide 8.15 discusses OSHA regulations and guidance in more detail.

A commenter observed that the NRC-proposed filter efficiency requirements specified in proposed footnote c do not take into account the observation that filter performance is far better in the field than under NIOSH certification testing conditions. The NIOSH tests are conducted at extreme conditions such as high flow rates, the challenge aerosol is selected to be the most penetrating particle size, and long test durations are used. Under field conditions most filters perform at nearly 100 percent efficiency.

Also it is not necessarily most protective to select a high efficiency filter because that results in a higher pressure drop across the filter which could increase breathing resistance and lead to a greater possibility of leakage around the seal as well as increased worker stress. The NRC staff agrees with this comment and final footnote b is changed to specify 95 percent efficiency filters for APFs less than 100, 99 percent efficiency filters for APFs equal to 100, and 99.97 percent efficiency for APFs greater than 100.

A commenter suggested that some language in proposed footnote d be clarified and that the last sentence could be covered in the text of the rule. The NRC staff has revised the first sentence in final footnote f to read, ''The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard.'' The last sentence in proposed footnote d made it clear that some sorbent cartridges have been proven to be effective against airborne gases and vapors and, after NRC staff review and approval on a case-by-case basis, the NRC will continue to permit their use. This provision clearly modifies information in Appendix A. The NRC staff believes it should remain in the footnotes. With the restructuring of Appendix A, this information is found in new footnotes c and f. More detailed discussion of the criteria for approval of sorbent cartridges against gases and vapors has been added to Regulatory Guide 8.15.

A commentor suggested deleting proposed footnote e because the initial statement to the effect that filtering facepieces may be used without medical screening or fit testing applies to all tight fitting respirators. That is not the case. Fit testing and medical screening are required for any respirator that is assigned a protection factor (APF). Only disposable, filtering facepieces without elastomeric sealing surface and adjustable straps that do not have an APF can be used without medical screening. If the devices are fit tested in order to use an APF, then medical screening would also be required.

This commentor suggested that the caution in the proposed footnote e to the effect that it is difficult to perform positive or negative pressure user seal checks on filtering facepiece respirators is not based on technical information. The statement is based on cumulative experience in the industry and inspection by the NRC staff of a large number of filtering facepiece respirators that do not have elastomeric sealing

surfaces and adjustable straps. In most cases, it was very difficult for highly experienced respirator users to effectively perform a user seal check on filtering facepiece respirators in the negative or positive pressure mode.

A commentor proposed deleting the last sentence in the final footnote i that warns against using SCBA in pressure demand or recirculating positive pressure modes if any outward leakage of breathing gas is perceived. This is an important warning for use of these devices in emergencies or unassessed situations because leakage could significantly reduce the expected duration of the air supply and thus stay time. Premature exhaustion of the air supply could result in serious injury or death of a worker in an Immediately Dangerous to Life and Health (IDLH) area. This warning appropriately modifies the assigned protection factor for this type of device.

A commentor suggested several revisions to the NRC proposed definitions. Based on several comments the NRC staff has decided to use OSHA definitions for consistency and the OSHA definitions are consistent with the suggestions made by this commentor.

A commentor questioned the use of the words ''as necessary'' in § 20.1703 (c)(2). The intent of the words ''as necessary'' is that surveys or bioassays should be included in the program only if a licensee believes that these methods would be needed to determine intake. For example, if air sampling during all procedures indicates that no radioactive material is ever released into the air, then evaluation of actual intakes using bioassay would not be necessary. Section 20.1204, Determination of internal exposure, states that for purposes of determining dose the licensee shall measure concentrations, do bioassay, whole body count, or combinations of these measurements. The purpose of § 20.1703(c)(2) is to identify elements of an acceptable program that may need to be included in the program, not to require performance of bioassay if it is not needed.

A commentor observed that the proposed § 20.1701 stated that ''The licensee shall use, to the extent *practicable,* process or other engineering controls (e.g. containment, decontamination, or ventilation) to control the concentration of radioactive material in air. The word ''practicable'' is used in place of ''practical'' as found in the current regulations. The NRC staff agrees with this comment to the effect that ''practicable'' would require any action that was ''possible,'' whereas ''practical'' specifies action that would be ''useful''. The word ''practical'' is consistent with ''reasonable'' as found in ALARA, As Low as Is Reasonably Achievable, and the final rule has been changed to retain the word ''practical.''

A commentor observed that the proposed definition of ''fit factor'' is a quantitative measure of the fit of a respirator to an individual. The proposed definition of ''fit test'' is a test, quantitative or qualitative to evaluate the fit of a respirator and to determine the fit factor. The commentor states that a qualitative fit test cannot yield a quantitative fit factor. In fact, approved qualitative fit test protocols are considered by NIOSH, OSHA, and ANSI to imply minimum quantitative fit factors, usually limited to 100.

However, because the NRC has decided to adopt the OSHA definitions, the final rule defines fit factor as ''* * *a quantitative *estimate* of the fit of a particular respirator to a specific individual, and typically *estimates* the ratio of the concentration of substance in ambient air to its concentration inside the respirator when worn.'' This definition permits use of a challenge medium whose concentration at ambient temperature and pressure can be estimated (C_1) and if not detected by the test subject, a maximum concentration inside the mask can be assumed, (C_2). The estimated fit factor would then be the ratio C_1/C_2. These qualitative fit factors are permitted to be used to determine fit factor, and Reg. Guide 8.15 will provide more detailed guidance on the use of approved protocols.

A commentor suggested that the listing of irritant smoke (hydrogen chloride) as an acceptable challenge agent in a user seal check (fit check), be removed. There is evidence of health risks associated with exposure to this chemical agent, not only to the worker but also to the person performing the test. The NRC staff has decided to keep this option as one of the acceptable user seal checks along with positive and negative pressure check and isoamyl acetate, because both OSHA and ANSI list it. However, the final version of Reg. Guide 8.15 will include a caution regarding excessive exposure to this agent as well as some suggestions for performing user seal checks with irritant smoke so as to minimize exposure.

This commentor pointed out that deleting the words ''* * * or had certification extended'' from § 20.1703(a) and § 20.1703(b), is appropriate but that users should be advised that any particulate respirators certified under 30 CFR Part 11 remain certified. The new certification regulations are at 42 CFR Part 84. The NRC staff agrees, and the statement of considerations includes a note to this effect, and Reg. Guide 8.15 discusses certification in more detail.

The commentor questioned the wording in § 20.1703(c)(3) that would exempt respirators with no APFs from user seal checks for tight fitting respirators and functional or operability checks for others such as atmosphere supplied suits. The NRC staff agrees that if a device is capable of being fit checked or operability checked then these checks should be performed each time the device is used whether or not a APF is used. The words ''* * *with APFs* * *'' are removed from § 20.1703(c)(3).

It was observed that § 20.1703(c)(6) does not specify that fit testing measures face seal rather than equipment operation and therefore must always be performed with the facepiece operating in the negative pressure mode. This provision has been changed to be consistent with ANSI. Also, the proposed requirement to fit test any tight-fitting, positive pressure, continuous flow and pressure demand devices to a fit factor ≥ 100 is inconsistent with the OSHA specification of 500. This difference could result in workers using different masks depending on whether the respirator was used for protection against radiological or non-radiological hazards. It was further stated that a fit factor of 100 may be too low for full-face tight-fitting masks because it in fact would represent a relatively poor fit. The NRC staff believes that the OSHA recommended fit factor of 500 is not difficult to achieve and provides an additional increment of safety. The final rule reflects this change.

A commentor observed that Appendix A lists a positive pressure (PP) operational mode for some air purifying respirator types. This designation refers to ''powered air purifying respirators (PAPR)'' and should be so designated. The NRC staff agrees and has made this change.

A commentor suggested the use of ''intake'' or ''dose from internal radioactive material,'' instead of ''internal exposures,'' because there is some confusion regarding the meaning of that term. The NRC staff has reviewed the final rule and, whenever appropriate, more precise terminology has been used as suggested.

A commenter references question number 91 in NUREG/CR–6204, Questions and Answers Based on Revised 10 CFR Part 20, in which the NRC staff stated that the requirements in 10 CFR 20.1703(a) must be met to use

respiratory protection whether or not credit is taken for the device. This statement was made before the NRC staff recognized the utility of permitting the use of disposable filtering facepieces (dust-masks) not equipped with elastomeric sealing surfaces and adjustable straps. The NRC continues to require compliance with § 20.1703(a) if respiratory protection is used. However, dust masks and other similar devices can be used, probably on request of a worker, without fit testing or medical screening. These half-face, light-weight devices do not present any significant physiological stresses and are to be used in situations that do not require limiting intake. Therefore, these devices can be removed at any time they become stressful without any harm to the user. Minimal training on the limitations and proper use of the devices would be required.

The commentor observed that the proposed rule would require fit factors that are ten times the APF for the specific negative-pressure air-purifying device, but that the rule does not specify how this fit testing can be accomplished. The NRC staff notes that guidance on fit testing, both quantitative and qualitative protocols, is found in Reg. Guide 8.15.

A commentor states that the term ''adequate communication'' in § 20.1703(e) may be difficult to demonstrate due to the limited communications options available with some respiratory devices and that ''adequate'' is subject to interpretation. The NRC staff agrees and intends that this requirement be determined by licensee judgement. Adequate, or ''sufficient for a specific requirement,'' is discussed in Reg. Guide 8.15, and guidance as to what constitutes adequate communication is provided. This is not a new requirement and the NRC staff is not aware of licensees having difficulty with its implementation.

The commentor questioned the requirement in § 20.1703(f) for ''direct'' communication between the standby rescue person and the worker because it might be necessary for the standby person to be in a high radiation area or otherwise be exposed to radiation or physiological stress. The NRC staff agrees and has changed this section to require the standby rescue person to ''maintain continuous communication'' with the workers. Acceptable communication methods are identified as, visual, voice, signal line, telephone, radio, or other suitable means.

The commentor stated that proposed § 20.1703(h) regarding materials or substances that might interfere with the seal of a respirator did not adequately reflect the discussion in the statement of considerations, and that, because the fit test proves the ability to properly maintain a seal, this restriction is not needed. The NRC staff observes that a fit test is not performed every time that a worker uses a respirator. A user seal check might work with some obstruction in the seal area but then break down in the work situation. To better reflect the scope and intent of this provision and to be consistent with OSHA, the NRC staff has added the underlined words as follows: (h) No *objects,* materials, or substances, *such as facial hair, or any other conditions that interfere with the face—facepiece seal or valve function,* that are under the control of the respirator wearer, are present.* * *

A commentor suggested elimination of the planned revision of NUREG–0041, ''Manual of Respiratory Protection Against Airborne Radioactive Material,'' because the document contains information that is found elsewhere and is redundant. The NRC staff agrees that it would not be useful to repeat information that is found elsewhere and one reason for updating and revising the NUREG is to eliminate and avoid redundancy. The document will be a technical source for NRC licensees setting up or operating respiratory protection programs that will include many references to ANSI, NIOSH, and other documents that describe acceptable programs. Only procedures unique to protection against airborne radioactive material will be addressed in detail if no other sources are available.

The commentor observed that waiving the medical screening requirement for the use of single-use disposable respirators is inconsistent with OSHA. In fact, OSHA waives the medical screening requirement for any voluntary use of filtering facepiece respirators. The assumption is that if a licensee determines that a respirator is not needed (meets ALARA considerations) but a worker requests one, then the least intrusive device should be used, such as a disposable, filtering facepiece with no APF that would be unlikely to expose the worker to physiological stress. The NRC position is consistent with that of OSHA.

Several commentors questioned the use of 15 percent loss of worker efficiency when using a respirator as a recommended, upper bound default value if a licensee is not able to justify a higher value. An EPRI study, for example, showed that loss of worker efficiency did not exceed 7 percent. Other measurements resulted in findings of 25 percent loss of efficiency under conditions requiring respiratory protection. With this range, a recommended default value of not more than 15 percent, as specified in Reg. Guide 8.15 seems reasonable. The guide provides suggestions for determining an efficiency loss factor that would be job and site specific.

A commentor questioned the need to apply to the Commission for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine). The commentor stated that the NRC should specify the same APF listed for particulate filters for radioactive gases or vapors with good warning properties. The NRC staff is aware that most radionuclides (*e.g.,* airborne radioiodines) have poor to no warning properties. For this reason, the NRC staff intends to continue requiring a specific case approval process with some demonstration of effectiveness before approval for use.

A commentor suggested permitting ''a licensed health care professional,'' in addition to a physician, to determine that a person is medically fit to use a respirator, as is done by OSHA. The established NRC position, as described further in Reg. Guide 8.15, continues to be that a licensed health care professional can administer a medical exam, but the program must be designed by, and be under the supervision of a physician. The NRC staff is aware that serious injury and death can occur if a person with certain medical conditions is permitted to use a respirator.

In May of 1991 the Commission published a major revision to 10 CFR Part 20 that required a licensee to implement and maintain a respiratory protection program that includes * * * Determination by a physician* * * that the individual user is physically able to use the respiratory protection equipment.'' In the statement of considerations for that final rule, the Commission noted ''* * *the decision on the physical ability of an individual to wear a respirator is a subjective judgement that in the Commission's opinion, requires the decisionmaker to have a medical degree.'' In 1995 the Commission reaffirmed this position in a rulemaking that revised the required frequency of medical examination. However, the statement of considerations for that rulemaking stated ''* * *The NRC staff believes that physicians need not administer each test personally, but that the physician may designate someone such as an office nurse to certify medical fitness as long as it is clear that the physician is ultimately responsible for

the fitness determination. Likewise the NRC staff believes that the physician should be involved in the supervision of the fitness program, the review of overall results and individuals cases that fall outside certain physician determined parameters, and supervision of personnel performing the tests.''

This position is in agreement with ANSI recommendations as stated in ANSI—Z88.6 1984. Regulatory Guide 8.15, Rev. 1, ''Acceptable Programs for Respiratory Protection states that, ''The medical evaluation program should be carried out by the physician, or by a certified, medically trained individual such as a registered nurse (RN), licensed practical nurse (LPN), emergency medical technician (EMT), or someone who, in the judgement of the licensee's physician, has adequate experience, education, training, and judgement to administer the screening program.'' This is consistent with OSHA's regulations that permit a ''licensed health care professional'' to administer the fitness screening program.

A commentor observed that ANSI Z88.2–1992, does not include APFs for SCBA used in the pressure-demand or positive pressure recirculating modes, because some workplace simulation tests showed that up to 5 percent of workers don't achieve protection factors that high. ANSI instead suggests that APFs up to 10,000 should be used only for emergency planning purposes. Footnote a to Appendix A in the NRC regulation makes it clear that the APFs apply only to airborne radiological hazards and not when chemical or other respiratory hazards exist.

A commentor suggested deletion of irritant smoke and isoamyl acetate as example of a user seal check because these are not checks that a user can perform without assistance. The NRC staff agrees but does not preclude the use of assistance in performing a user seal check. It is common for a technician to perform user seal checks on a work crew preparing for entry to a job site requiring respirators. If no assistance is available then clearly positive or negative pressure checks would be the available options.

It was suggested that more guidance be provided on functional check or testing for operability. The NRC staff agrees and Reg. Guide 8.15 will be expanded to provide more guidance on accepted techniques.

It was suggested that more specificity regarding actual procedures be put in the rule or the Reg. Guide and that requirements for addressing non-routine and emergency use of respirators should be added. The NRC staff does not agree because respiratory programs should be site and work specific and the intent of revising the rule was to make it more performance based. Considerable guidance on acceptable methods exists and is referenced in Reg. Guide 8.15 or NUREG–0041.

A commentor said that NRC should require use of the OSHA medical check questionnaire, or its equivalent. The NRC staff agrees that the OSHA questionnaire is an acceptable way, along with appropriate medical oversight, to medically screen workers to use respirators safely, but that other methods are also acceptable. In the interest of maintaining a performance-based rule, the NRC will rely on review of a licensee's/physician's judgement regarding the best way to qualify workers. The OSHA questionnaire is referenced in Reg. Guide 8.15 for guidance.

It was suggested that provisions for vision, communication, and low temperature protection be made at no cost to the employee. The NRC staff believes that this issue is outside the scope of 10 CFR Part 20 and should be addressed between workers and licensee management.

A commentor suggested adding a definition for ''Immediately Dangerous to Life or Health,'' IDLH. Subpart H of 10 CFR Part 20 provides program requirements for respiratory protection against airborne radioactive material. It would be extremely rare for airborne concentrations of radioactive material to reach IDLH levels. IDLH refers to industrial and toxic chemical hazards that NRC licensees must be alert to in compliance with OSHA regulations. It would be inappropriate for NRC to suggest that airborne radiological condition would require a definition of IDLH. OSHA defines IDLH as ''* * * an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individuals' ability to escape from a dangerous atmosphere.''

It was suggested that § 20.1703(f) state that a sufficient number of standby rescue persons must be immediately available to *provide effective emergency rescue.* The NRC staff agrees and these words have been added.

A commentor observed that the APFs specified by NRC in Appendix A are not in complete agreement with those recommended by ANSI. The difference for disposable filtering facepieces (dust masks) has been discussed. Any other differences between the ANSI recommended APFs and those specified by the NRC in the proposed rule have been eliminated in this final rule in the interest of providing greater consistency with ANSI recommendations.

Eight comment letters were received regarding the draft Reg. Guide 8.15. All of the suggested changes derived from comments made on proposed Subpart H of 10 CFR Part 20. Reg. Guide 8.15 has been revised based on this analysis of comments submitted on the proposed rule and the changes that have been made to the rule as discussed in this section.

III. Summary of Changes

This final rule amends § 20.1003, ''Definitions'', §§ 20.1701 through 20.1704, adds § 20.1705, and amends Appendix A to Part 20.

In § 20.1003, the NRC is adding definitions for Air-purifying respirator, Assigned protection factor (APF), Atmosphere-supplying respirator, Demand respirator, Disposable respirator, Filtering facepiece (dust mask), Fit factor, Fit test, Helmet, Hood, Loose-fitting facepiece, Negative pressure respirator, Positive pressure respirator, Powered air-purifying respirator (PAPR), Pressure demand respirator, Qualitative fit test (QLFT), Quantitative fit test (QNFT), Self-contained breathing apparatus (SCBA), Supplied-air respirator (SAR) or airline respirator, Tight-fitting facepiece and User seal check. These added definitions clarify the new regulations at §§ 20.1701 through 20.1705.

In § 20.1701, the word ''decontamination'' is added to the list of examples of process or engineering controls that licensees should consider for controlling the concentration of radioactive material in air. The NRC intends that licensees consider decontamination, consistent with maintaining total effective dose equivalent (TEDE) ALARA, to reduce resuspension of radioactive material in the work place as a means of controlling internal dose instead of using respirators.

Section 20.1702 is revised to clarify that if a licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee may consider safety factors other than radiological. A reduction in the TEDE for a worker is not reasonably achievable if, in the licensees' judgement, an attendant increase in the worker's industrial health and safety risk would exceed the benefit obtained by the reduction in the radiation risk. Regulatory Guide 8.15, ''Acceptable Programs For Respiratory Protection,'' and NUREG–0041, ''Manual of Respiratory Protection Against Airborne Radioactive Material'' address how factors such as heat, discomfort, reduced vision, etc., associated with respirator use, might reduce efficiency

or increase stress thereby increasing dose from external sources or health risk. The NRC expects that licensees will exercise judgment in determining how nonradiological factors apply to selecting an appropriate level of respiratory protection. In the proposed rule this amendment would have been accomplished by adding a footnote to paragraph (c). The NRC has instead restructured the section to add similar language to a new subparagraph § 20.1702(b) in the text of the rule to facilitate clarification of this important provision.

Section 20.1703 states the requirements for licensees who use respiratory protection equipment to limit intake of radioactive material. The use of a respirator is, by definition, intended to limit intakes of airborne radioactive materials, unless the device is clearly and exclusively used for protection against non-radiological airborne hazards. Whether or not credit is taken for the device in estimating doses, use of the respiratory protection device to limit intake of radioactive material and associated physiological stresses to the user activates the requirements of § 20.1703. Thus § 20.1703 defines the minimum respiratory protection program expected of any licensee who assigns or permits the use of respirators to limit intake.

The term ''limit intake of radioactive material'' is not specifically defined in this rule. The licensee must determine whether the use of a respirator for protection against non-radiological airborne hazards or at the request of a worker also limits the intake of radioactive material. If so a § 20.1703 program is required. An acceptable approach is for the licensee to evaluate the existing or potential airborne concentrations of radioactive material (from routine operations, likely operational occurances, and credible emergency conditions) and determine whether a Part 20, Subpart H respiratory program would have been required by the concentration of radioactive material. If the analysis shows that respiratory protection would not have been required in order to limit intake of radioactive material, then compliance with Subpart H would not be required. Respirators used for the express purpose of protection against non-radiological hazards, and that only incidentally limit the intake of radioactive materials that may be present in the air, are not considered to fall under the ''limit intake'' category. Such respirator use is not regulated by Subpart H provisions.

However, respiratory protection that is used to protect against non-radiological hazards or at the request of a worker invokes OSHA program requirements. The programmatic requirements prescribed by OSHA are commensurate with the degree of hazard present, ranging from a program more prescriptive than Subpart H to brief instruction on safety issues in the case of the voluntary use of ''dust masks.'' Under a Memorandum of Understanding between the NRC and OSHA, the NRC inspection staff is obligated to notify the licensee and OSHA if industrial safety problems are observed.

In § 20.1703(a), the phrase ''pursuant to § 20.1702'' is removed. This language has been misinterpreted to mean that an approved respiratory protection program is not needed if respirators are used when concentrations of radioactive material in the air are already below values that define an airborne radioactivity area. Section 20.1703 now makes it clear that, if a licensee uses respiratory protection equipment ''to limit intakes,'' the provisions of § 20.1703 are the minimum applicable requirements.

In final § 20.1703(a), licensees are permitted to use only respirators that have been tested and certified by NIOSH. The words ''or had certification extended'' are removed because all existing extensions have expired and no new extensions will be granted except for classes of respirators certified under 42 CFR Part 84.

Note: The respiratory certification regulations at 42 CFR Part 84 replaced those previously at 30 CFR Part 11 for air purifying respirators. Devices formerly certified under 30 CFR Part 11 remain certified but newer devices certified under 42 CFR Part 84 have demonstrated improved performance.

In final § 20.1703(b), licensees are permitted to apply for authorization to use equipment that has not been tested or certified by NIOSH. The words ''and has not had certification extended by NIOSH/MSHA'' have been removed because all existing extensions have expired and no new extensions will be granted except for classes of respirators certified under 42 CFR Part 84. The words ''to the NRC'' are added to make it clear that applications for authorized use of respiratory equipment must be submitted to the Commission.

In new § 20.1703(c), paragraphs (c)(1) through (5) are retained as presently codified with the exception of some minor editing. Paragraph (c)(4) is reworded to improve clarity, reorder priorities, and bring together in one paragraph all of the elements of the required written procedures. Paragraph (c)(5) is revised to clarify that the worker's medical evaluation for using non-face sealing respirators occurs before first field use, not before first fitting (as required for tight fitting respirators) because fit testing is not needed for these types.

A new § 20.1703(c)(6) is added to require fit testing before first field use of tight-fitting, face sealing respirators and periodically after the first use. This change clarifies when and how often fit testing is required. The NRC requires that the licensee specify a frequency of retest in the procedures, that may not exceed 1 year (see HPPOS–219 for NRC staff position on testing intervals). The proposed rule would have extended the retest period up to three (3) years. However, public comment and the NRC's intent to be consistent with OSHA requirements, convinced the NRC staff to retain annual fit testing. (See Analysis of Public Comment).

The new § 20.1703(c)(6) also codifies existing NRC staff guidance and ANSI recommendations regarding the test ''fit factors'' that must be achieved in order to use the APFs. Specifically, fit testing with ''fit factors'' ≥ 10 times the APF is required for tight fitting, negative pressure devices. A fit factor ≥ 500 is required for all tight fitting face pieces used with positive pressure, continuous flow, and pressure-demand devices. ANSI recommended a fit factor of 100 for these devices but OSHA selected 500 to provide an additional safety margin. The NRC staff agrees with the OSHA position and in the interest of consistency is specifying 500. This provision is intended to maintain a sufficient margin of safety to accommodate the greater difficulty in maintaining a good ''fit'' under field and work conditions as compared to fit test environments. It is important to note that all tightfitting facepieces are to be fit tested in the negative pressure mode regardless of the mode in which they will be used.

Current § 20.1703(a)(4), which required licensees to issue a written policy statement, is removed because the NRC believes that it is not needed. All of the elements that were required to be in the policy statement are already found in Part 20 and in the requirement for licensees to have and implement written procedures (see § 20.1703(c)(4)).

The requirements of § 20.1703(a)(6) have been moved to § 20.1703(e), clarified and expanded to emphasize the existing requirements that provisions be made for vision correction, adequate communications, and low-temperature work environments. A licensee is required to account for the effects of restricted vision and communication limitations as well as the effects of adverse environmental conditions on the equipment and the wearer. The NRC

considers the inability of the respirator wearer to read postings, operate equipment and/or instrumentation, or properly identify hazards to be an unacceptable degradation of personnel safety.

A requirement for licensees to consider low-temperature work environments when selecting respiratory protection devices is added in § 20.1703(e). The NRC believes that this requirement is needed because the moisture from exhaled air when temperatures are below freezing could cause the exhalation valve on negative pressure respirators to freeze in the open position. The open valve would provide a pathway for unfiltered air into the respirator inlet covering without the user being aware of the malfunction. Lens fogging that reduces vision in a full facepiece respirator is another problem that can be caused by low temperature.

The reference to skin protection in § 20.1703(a)(6) has been removed. The NRC does not consider skin protection to be an appropriate reason for the use of respirators (with the exception of air supplied suits). Limitation of skin dose is currently dealt with elsewhere in the regulations (§ 20.1201(a)(2)(ii), skin dose limit). It may be inconsistent with ALARA to use tight fitting respirators solely to prevent facial contamination. Other protective measures such as the use of faceshields instead of respirators, or decontamination should be considered.

A new § 20.1703(f) is added to include a requirement for standby rescue persons in the regulatory text. This requirement was previously contained in a footnote in Appendix A to Part 20. This provision retains a requirement for standby rescue persons to be present whenever one-piece atmosphere-supplying suits, or any other combination of supplied air respirator device and protective equipment are used that are difficult for the wearer to take off without assistance. Standby rescue persons would also need to be in continuous communication with the workers, be equipped with appropriate protective clothing and devices, and be immediately available to provide needed assistance if the air supply fails. Without continuous air supply, unconsciousness can occur within seconds to minutes.

A new § 20.1703(g) moves a requirement from a footnote in Appendix A to Part 20, into regulatory text. This paragraph specifies the minimum quality of supplied breathing air, as defined by the Compressed Gas Association (CGA) in their publication G–7.1, ''Commodity Specification for Air,'' 1997, that must be provided whenever atmosphere-supplying respirators are used. This change which recognizes the CGA recommendations for air quality, was initiated by NIOSH and endorsed by ANSI. The quantity of air supplied, as a function of air pressure or flow rate, would be specified in the NIOSH approval certificate for each particular device and is not addressed in the rule.

A new § 20.1703(h) is added to clarify and move a requirement from the footnotes of Appendix A into regulatory text. This provision prohibits the use of respirators whenever any objects, materials, or substances such as facial hair, or any other conditions interfere with the seal of the respirator. The intent of this provision is to prevent the presence of facial hair, cosmetics, spectacle earpieces, surgeons caps, and other things from interfering with the respirator seal, exhalation valves, and/or proper operation of the respirator.

Section 20.1703(b)(1) discussed the selection of respiratory protection equipment so that protection factors are adequate to reduce intake. This paragraph permitted selection of less protective devices if that would result in optimizing TEDE. The NRC staff believes that this requirement is redundant with the requirement to be ALARA. These recommendations are removed from the regulation and are now discussed in revised Regulatory Guide 8.15.

The remainder of § 20.1703(b)(1) has been moved to § 20.1703(i) and incorporates the new ANSI terminology for ''assigned protection factor''. This paragraph retains the provisions for changing intake estimates if later, more accurate measurements show that intake was greater or less than initially estimated.

Section 20.1703(b)(2), specifying procedures for applying to the NRC to use higher APFs, has been moved to § 20.1705.

Section 20.1703(c) is removed because it requires licensees to use only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by NIOSH, as emergency devices. Because only equipment approved by NIOSH or NRC can be used in the respiratory protection program pursuant to § 20.1703(a) and (b), this provision is redundant. The revisions of Regulatory Guide 8.15 and NUREG–0041 discuss acceptable types of emergency and escape equipment.

Section 20.1703(d) is removed. This provision required a licensee to notify the director of the appropriate NRC Regional Office in writing at least 30 days before the date that respiratory protection equipment is first used so that the NRC staff could review the licensee program. Licensees who possess radioactive material in a form that requires a respiratory protection program are expected to submit a program description during the license application, amendment, or renewal processes. Their programs would be reviewed during this process. A 30-day notification requirement imposes a needless administrative burden on licensees with no increase in worker health and safety. This change is considered to be a burden reduction.

Section 20.1704(a) is revised to clarify that the Commission will use ALARA considerations in any additional restrictions imposed by the Commission on the use of respiratory protection equipment for the purpose of limiting exposures of individuals to airborne radioactive materials.

Appendix A to Part 20—''Assigned Protection Factors for Respirators,'' is modified extensively. In general, new devices are recognized, APFs are revised to be consistent with current ANSI guidance and technical knowledge, and the footnotes to Appendix A are moved, deleted, revised, or adjusted so that only those necessary to explain the table remain. Footnotes that are instructive or that facilitate implementation of the rule are being moved to Regulatory Guide 8.15. Several footnotes are considered to be redundant in that they reiterate NIOSH certification criteria to be discussed in NUREG–0041 and are removed. Generic regulatory requirements, previously contained in footnotes in Appendix A, have been moved to the text of Part 20.

The column headed ''Tested and Certified Equipment'' is removed from the table. The references to Titles 30 and 42 of the CFR currently found in this column apply primarily to respirator manufacturers and are not very useful to NRC licensees. Instruction on how to determine if a respirator is NIOSH approved are provided in the revision to NUREG–0041.

The column headed Gases and Vapors is deleted, and the APFs for Air Purifying respirators are designated ''particulate only,'' while APFs for Atmosphere Supplying and Combination Respirators are designated for ''particulate, gases and vapors''. This change simplifies Appendix A.

Footnote a to Appendix A is removed because it is redundant with air sampling requirements and requirements for estimating possible airborne concentration addressed in § 20.1703(c)(1) and § 20.1703(i).

Footnote b, which permits the use of devices only when nothing interferes with the seal of a face piece, has been moved to the text of the rule at § 20.1703(h).

Footnote c, proposed footnote b, which defines the symbols for modes of operation, is removed as a result of public comment and operating modes are spelled out in Appendix A.

Footnote d.1 is removed because the essential information regarding the meaning and use of APF is in § 20.1703(i). Further guidance regarding the application and limitation of APFs is provided in the revisions of Regulatory Guide 8.15 and NUREG–0041.

Footnote d.2(a) stated that APFs are only applicable for trained individuals who are properly fitted and for properly maintained respirators. This footnote is redundant because adequate provisions for training, fit-testing, and equipment maintenance are found in the final rule (§ 20.1703(c)(4)).

Footnote d.2(b) stated that APFs are applicable for air-purifying respirators only when high-efficiency particulate filters are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards. This statement is revised and included in footnote b to say that if using a respirator with an APF less than 100, a filter with a minimum efficiency of 95 percent must be used. Air purifying respirators with APF=100 must use a filter with an efficiency rating of at least 99 percent. Respirators with APF>100 must use filters with at least 99.97 percent efficiency. Further guidance is provided in Regulatory Guide 8.15 and NUREG–0041. The definitions of filter types and efficiencies are discussed in the revisions of Regulatory Guide 8.15 and NUREG–0041.

Footnote d.2(c) stated that APFs cannot be used for sorbents against radioactive gases and/or vapors (e.g., radioiodine). This is no longer an absolute prohibition. A provision is made in footnote c for licensees to apply to the Commission for the use of an APF greater than 1 for sorbent cartridges.

Footnote d.2(d) restated part of the NIOSH approval criteria for air quality for supplied air respirators and self-contained breathing apparatus. This requirement is changed to reflect the fact that air quality standards derive from ANSI's recognition of the Compressed Gas Association guidance, and is moved to the text of the rule (§ 20.1703(g)). Air quality is discussed further in Regulatory Guide 8.15 and NUREG–0041.

Footnote e made it clear that the APFs for atmosphere-supplying respirators and self-contained breathing apparatus are not applicable in the case of contaminants that present a skin absorption or submersion hazard. This statement is retained in footnote f in Appendix A to Part 20. However, the current exception provided for tritium oxide requires correction in that the effective protection factor cannot exceed 3, rather than 2 as previously stated. This correction is made to footnote f of Appendix A. This basis for this change is discussed further in revised NUREG–0041.

Footnote f stated that canisters and cartridges for air purifying respirators will not be used beyond service-life limitations. This observation restates a NIOSH approval criterion and is more appropriate to guidance than to the regulations. This footnote is removed. Service life limitations are addressed in Regulatory Guide 8.15 and NUREG–0041.

Footnote g addressed four issues. The first limits the use of half-mask facepiece air purifying respirators to ''under-chin'' types only. This limitation is retained in footnote e to the new Appendix A to Part 20. The only type of facepiece eliminated by this requirement is the so-called ''quarter-mask'' which seals over the bridge of the nose, around the cheeks and between the point of the chin and the lower lip. These devices can exhibit erratic face-sealing characteristics, especially when the wearer talks or moves his/her mouth.

The second issue precluded this type of respirator if ambient airborne concentrations can reach instantaneous values greater than 10 times the pertinent values in Table 1, Column 3 of Appendix B to Part 20. Because respirator assignment is now based on TEDE, ALARA, and other considerations, this part of footnote g is removed from the new footnote e.

The third issue precluded the use of this type of respirator for protection against plutonium or other high-toxicity materials. Half-mask respirators, if properly fitted, maintained, and worn, provide adequate protection if used within the limitations stated in the NIOSH approval and in the rule. The NRC finds no technical or scientific basis for continuing this prohibition in view of current knowledge and it is removed.

Finally this footnote required that this type mask be checked for fit (user seal check) before each use. This provision is removed because § 20.1703(c)(3) requires a user to perform a user seal check (e.g., negative pressure check, positive pressure check, irritant smoke check) each time a respirator is used.

Footnote h provided several conditions on air-flow rates necessary to operate supplied air hoods effectively. Because all of these requirements are elements of the NIOSH approval criteria, they are redundant and are removed. These NIOSH requirements are discussed further in the revision to NUREG–0041.

Footnote i specified that appropriate protection factors be determined for atmosphere-supplying suits based on design and permeability to the contaminant under conditions of use. Conditions for the use of these devices are retained in footnote g to the revision of Appendix A. Guidance on the use of these devices and on determining appropriate protection factors is included in the revision to Regulatory Guide 8.15. Footnote i also required that a standby rescue person equipped with a respirator or other apparatus appropriate for the potential hazards, and communications equipment be present whenever supplied-air suits are used. This requirement is moved to the text of the rule (§ 20.1703(f)).

Footnote j stated that NIOSH approval schedules are not available for atmosphere-supplying suits. This information and criteria for use of atmosphere supplying suits is addressed in footnote g to Appendix A. Note that an APF is not listed for these devices. Licensees may apply to the Commission for the use of higher APFs in accordance with § 20.1703(b).

Footnote k permitted the full facepiece self-contained breathing apparatus (SCBA), when operating in the pressure-demand mode, to be used as an emergency device in unknown concentrations. This provision is retained in footnote i to Appendix A, and full facepiece SCBA operating in positive pressure, recirculating mode is added.

Footnote l required quantitative fit testing with a leakage less than 0.02 percent for the use of full facepiece, positive pressure, recirculating mode SCBA. This requirement is removed from the footnotes and fit test criteria consistent with ANSI guidance are inserted at § 20.1703(c)(6). Fit testing is addressed in the revision to Regulatory Guide 8.15.

Footnote l also stated that perceptible outward leakage of breathing gas from this or any positive pressure SCBA whether open circuit or closed circuit is unacceptable, because service life will be reduced substantially. This provision is retained in footnote i to Appendix A.

Footnote l also required that special training in the use of this type of

apparatus be provided to the user. The NRC believes that the training requirement that would be retained at § 20.1703(c)(4) is adequate to assure the training necessary for the use of SCBA devices. This element of footnote l is removed.

Note 1 to Appendix A to Part 20 discussed conditions under which the protection factors in the appendix may be used, warned against assuming that listed devices are effective against chemical or respiratory hazards other than radiological hazards, and stated the need to take into account applicable approvals of the U.S. Bureau of Mines/NIOSH when selecting respirators for nonradiological hazards. Note 1 is retained in footnote a to Appendix A and amended to reference Department of Labor (DOL) regulations. The NRC believes that these conditions are essential to the safe use of respirators and that the DOL regulations also apply when hazards other than radiological respiratory hazards are present.

Note 2 to Appendix A warned that external dose from submersion in high concentrations of radioactive material may result in limitations on occupancy being governed by external dose limits. This note is retained as the second paragraph of footnote a to Appendix A to Part 20.

In the title of Appendix A, and throughout the rule, the term ''assigned protection factor'' (APF) is used to be consistent with the new ANSI Z88.2–1992 terminology.

Although ANSI suggested an APF = 10 for all half-mask filtering facepiece disposable respirators, disposables that do not have seal-enhancing elastomeric components and are not equipped with two or more adjustable suspension straps are permitted for use but do not have an APF assigned (*i.e.*, no credit may be taken for their use). The NRC believes that without these design features it is difficult to maintain a seal in the workplace. These devices have little physiological impact on the wearer, may be useful in certain situations, and they may accommodate workers who request respiratory protection devices as is required by OSHA. Medical screening is not required for each individual prior to use because the devices impose very little physiological stress. In addition, fit testing is not required because an APF is not specified (*i.e.*, no credit may be taken for their use). However, all other aspects of an acceptable program specified in § 20.1703 are required including training of users in the use and limitations of the device. The NRC believes that this provision allows the flexible and effective use of these devices without imposing conditions that are burdensome.

However, for those licensees who would like to use the ANSI-recommended APF of 10 for filtering facepiece (dust masks), footnote d to Appendix A permits an APF of 10 to be used if the licensee can demonstrate a fit factor of at least 100 using a validated or evaluated, quantitative or qualitative fit test. This requirement is consistent with ANSI recommendations because fit testing is an explicit component of the ANSI respirator program. The full § 20.1703 program would then be needed including a medical evaluation.

The half-facepiece respirator continues to be approved with an APF = 10, but relatively new variations of this type of device are referred to in the industry as ''reusable,'' ''reusable-disposable,'' ''filtering facepiece'' or ''maintenance-free'' devices. In these devices, including those considered to be disposables, the filter medium may be an integral part of the facepiece, is at least 95 percent efficient, and may not be replaceable. Also, the seal area is enhanced by the application of plastic or rubber to the face-to-facepiece seal area and the 2 or more suspension straps are adjustable. These devices are acceptable to the NRC, are considered half facepieces, may be disposable, and are given an APF = 10, consistent with ANSI recommendations. Individual workers must achieve a fit factor of at least 100 to use the APF of 10.

The APF for full facepiece air purifying respirators operating in the negative pressure mode is increased from 50 to 100. This change is consistent with ANSI recommendations based on review of industry test results. Appendix A previously listed a protection factor of 50 because one design that was tested at Los Alamos in 1975 did not meet the protection factor criterion of 100. This device is no longer available.

A fit factor of 10 times the APF for tight fitting, negative-pressure air-purifying respirators, which must be obtained as a result of required fit testing under § 20.1703(c)(6), is recommended by ANSI and is required under the new rule. A person would have to achieve a minimum of 1,000 on a fit test in order to use an APF of 100 in the field. Requiring a fit factor of 10 times the APF for negative pressure devices effectively limits intake and protects against any respirator leakage that might occur during workplace activities. A fit factor ≥ 500 is required for any positive pressure, continuous flow and pressure demand device. The proposed rule had stated a fit factor of 100. However, public comment suggested this number was too low, and OSHA rules also require 500.

A new category of respirator, the loose-fitting facepiece, positive pressure (powered) air purifying type, is included in Appendix A to Part 20. An APF of 25 is assigned to this new device in accordance with ANSI Z88.2–1992.

The half facepiece and the full facepiece air-line respirators operating in demand mode were listed in the proposed rule with APFs unchanged at 5. In order to be consistent with ANSI and with public comment, the APFs for these two devices have been changed. The new APF for the half facepiece is 10, and the APF for the full facepiece is 100. The NRC believes that supplied-air respirators operating in the demand mode should be used with great care in nuclear applications. Because they are very similar in appearance to more highly effective devices (continuous flow and pressure-demand supplied air respirators), they might mistakenly be used instead of the more protective devices.

The APFs for half- and full-facepiece air-line respirators operating on continuous flow are reduced from 1,000 to 50 and from 2,000 to 1,000 respectively. The APF for a full facepiece air-line respirator operating in pressure-demand mode is reduced from 2,000 to 1,000. These changes are based on ANSI recommendations and the results of field and laboratory experiences indicating that these devices are not as effective as originally thought. This change is expected to have little impact on licensees because typical workplace concentrations encountered are far less than 1000 times the derived air concentrations (DACs). However, licensees may apply for higher APFs if needed and justified. A half-mask air-line respirator operating in pressure-demand mode is added to Appendix A with an APF of 50 based on ANSI recommendations. The helmet/hood air-line respirator operating under continuous flow is retained with the APF listed as 1,000. Footnote h which specified NIOSH certification criteria for flow rates is removed. The criteria for air flow rates are part of the NIOSH approval and are addressed in the revision to NUREG–0041.

The new loose-fitting facepiece design is also included as an air-line respirator operating under continuous flow. This device is assigned an APF of 25 in Appendix A consistent with ANSI recommendations.

The air-line atmosphere-supplied suit is not assigned an APF. These devices have been used with no APF for many years in radiological environments, such as control rod drive removal at boiling

water reactors. These devices are primarily used as contamination control devices, but they are supplied with breathing air. No worker safety problems are known to have occurred at nuclear power plants or other NRC licensees that would disallow use of these devices. The NRC is allowing the use of non-NIOSH-approved suits but wearers are required to meet all other respirator program requirements in § 20.1703 except the need for a fit test. Licensees have an option to apply to the Commission for higher APFs for these devices in accordance with § 20.1703(b). Requirements for standby rescue persons apply to operations where these devices are used (§ 20.1703(f)).

In Appendix A to Part 20, APFs for SCBA devices remain unchanged except for those operating in demand or demand recirculating modes. APFs for these two devices have been changed from 5 to 100 to be consistent with ANSI and in response to public comment. Use of SCBA in demand open circuit and demand recirculating mode requires considerable caution. The chance of facepiece leakage when operating in the negative pressure mode is considerably higher than when operating in a positive pressure mode. This is especially critical for devices that could be mistakenly used in immediately dangerous to life and health (IDLH) areas during emergency situations. Although ANSI lists relatively high APFs for these devices, they are not recommended by the NRC for use and acceptable alternative devices are readily available. Footnote h requires that controls be implemented to assure that these devices are not used in IDLH areas.

A specific statement is added in footnote f, to exclude radioactive noble gases from consideration as an inhalation hazard and advising that external (submersion) dose considerations should be the basis for protective actions. DAC values are listed for each noble gas isotope. This has led some licensees to inappropriately base respirator assignments in whole or in part on the presence of these gases. The requirement for monitoring external dose can be found in 10 CFR 20.1502.

IV. Issue of Compatibility for Agreement States

In accordance with the Policy Statement on Adequacy and Compatibility of Agreement State Programs published September 3, 1997 (62 FR 46517) and implementing procedures, the modifications to § 20.1701 through § 20.1703 (except 20.1703(c)(4)), have health and safety significance and Agreement States should adopt the essential objectives of these rule modifications. Therefore, these provisions are assigned to the ''Health and Safety (H&S)'' category. The definitions (added to § 20.1003), of Air purifying respirator, Atmosphere-supplying respirator, Assigned Protection Factor (APF), Demand respirator, Disposable respirator, Fit factor, Fit test, Filtering facepiece (dust mask), Helmet, Hood, Loose-fitting facepiece, Negative pressure respirator, Positive pressure respirator, Powered air-purifying respirator, Pressure demand respirator, Qualitative fit test, Quantitative fit test, Self-contained breathing apparatus, Supplied-air respirator, Tight-fitting facepiece, and User seal check (fit check), because of their precise operational meanings, are designated as compatibility category B to help insure effective communication and to promote a common understanding for licensees who operate in multiple jurisdictions. Therefore, Agreement States should adopt definitions that are essentially identical to those of NRC.

§ 20.1703(c)(4) and § 20.1704, which address requirements for written procedures, and imposition of additional restrictions on the use of respiratory protection, respectively, are designated as compatibility category D.

Appendix A to 10 CFR Part 20, and § 20.1705 which permits applying for the use of higher APFs on a case by case basis, are designated as compatibility category B. Consistency is required in APFs that are established as acceptable in NRC and Agreement State regulations to reduce impacts on licensees who may operate in multiple jurisdictions.

V. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that the amendments are not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required.

The amendments make technical and procedural improvements in the use of respiratory protection devices to maintain total occupational dose as low as is reasonably achievable. None of the impacts associated with this rulemaking have any effect on any places or entities outside of a licensed site. An effect of this rulemaking is expected to be a decrease in the use of respiratory devices and an increase in engineering and other controls to reduce airborne contaminants. It is expected that there would be no change in radiation dose to any member of the public as a result of the revised regulation.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. Therefore, in accord with its commitment to complying with Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994, in all its actions, the NRC has also determined that there are no disproportionate, high, and adverse impacts on minority and low-income populations. The NRC uses the following working definition of ''environmental justice'': the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

The NRC requested public comments and the views of the States on the environmental assessment for this rule. No comments were received that addressed changes to the environmental assessment.

The environmental assessment is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

VI. Paperwork Reduction Act Statement

This final rule decreases the burden on licensees by eliminating reporting requirements in § 20.1703(a)(4) and (d). The burden reduction for this information collection is estimated to be 250 hours annually. Because the burden reduction for this information collection is insignificant, compared to the overall burden of 10 CFR Part 20, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0014.

VII. Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

VIII. Regulatory Analysis

The NRC has prepared a regulatory analysis for the amendments. The analysis examines the benefits and impacts considered by the NRC. The regulatory analysis is available for

inspection at the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC certifies that, this rule will not have a significant economic impact on a substantial number of small entities. The anticipated impact of the changes will not be significant because the revised regulation basically represents a continuation of current practice. The benefit of the rule is that it provides relief from certain reporting and recordkeeping requirements, incorporates several ANSI recommendations for improved programmatic procedures, and permits the use of new, effective respiratory devices, thus increasing licensee flexibility.

X. Backfit Analysis

Although the NRC staff has concluded that some of the changes being made constitute a reduction in burden, the implementation of these and other changes will require revisions to licensee procedures constituting a backfit under 10 CFR 50.109(a)(1), 72.62(a)(2), and 76.76(a)(1). However, because the rule incorporates national consensus standard (ANSI) recommendations that are worker safety related, the NRC staff believes that this rule constitutes a substantial increase in the overall protection of public health and safety that is cost justified.

The Regulatory Analysis that was prepared for this rule concluded that the rule would result in a net benefit to industry of about $1.5 million dollars per year, including the cost of revising procedures. The largest savings result from eliminating the need for a written policy statement and permitting the use of disposable, filtering facepieces instead of more expensive respirators. For most of the other changes made in this final rule, the costs of implementing the change are equal to the estimated cost savings. The Regulatory Analysis further concludes that compared to the practice under the current Part 20, Subpart H, each change either involves no change in value/impact, or represents an improvement in regulatory protection of worker health and safety without any significant added costs (i.e., all value), or presents the potential for reductions in regulatory burden and/or increased operational flexibility with net savings to licensees and the NRC.

Many of the changes only clarify existing requirements (i.e., reduce the potential for licensee misunderstandings) or formally adopt recommendations of the current ANSI standard Z88.2–1992.

Section III in this FR Notice, Summary of Changes, summarizes the changes to Subpart H of 10 CFR Part 20. The reasons for making these changes are also provided. Many of the changes are considered by the NRC to constitute a substantial worker safety enhancement in that they reflect new consensus technical guidance published by the American National Standards Institute (ANSI) on respiratory protection developed since 10 CFR Part 20, Subpart H was published. The changes include recognizing new respirator designs and types that were not available 20 years ago, changing the assigned protection factors (APFs) based on new data, deleting certain reporting requirements which are considered no longer needed for oversight of a mature industry, and numerous procedural improvements that have been developed and proven by respiratory practitioners.

Permitting the use of disposable, filtering facepieces, for example, accommodates workers who voluntarily use respiratory protection when it is not needed. These devices provide some respiratory protection, do not impose stress or breathing resistance on workers as do more cumbersome designs, and when credit is not being taken for their use, do not require medical screening or fit testing.

Current NRC regulations list APFs that are inconsistent with current national consensus standards. APFs are used to select types of respirators to provide needed degree of protection, and to estimate the intake and internal dose workers might receive. The new, and correct, APFs will provide a substantial increase in worker protection.

Deleting two paperwork requirements that are no longer considered useful or needed will permit resources to be redirected to more important safety matters.

Incorporation of the ANSI fit test criteria provides a needed safety margin that protects against deteriorating conditions in the workplace that affect facepiece seal.

The rule also leads to greater uniformity of practice in that the new requirements are consistent with the general respiratory protection regulations published recently by OSHA. NRC licensees are often subject to OSHA respiratory protection regulations when the intent is to protect workers against non-radiological inhalation hazards. This final rule would not require a licensee to maintain two distinct programs, and only minor differences exist between the OSHA requirements and this final rule.

In addition the new rules provide greater flexibility in practice in that several new devices are now approved for use. Numerous prescriptive requirements are deleted because they are redundant or no longer needed. The Assigned Protection Factors currently in Appendix A of 10 CFR Part 20 are incorrect; some are too conservative and others might underprotect the worker. This rule corrects the APFs in the NRC regulations according to the national consensus standard recommendations of ANSI.

In conclusion, the Commission believes that for quantitative and qualitative reasons, this rule change constitutes a burden reduction and a substantial increase in the overall protection of public (worker) health and safety that is cost justified.

XI. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule the NRC is using recommendations from the following voluntary consensus standard, ''American National Standard for Respiratory Protection,'' (ANSI Z88.2), American National Standards Institute, 1992.

List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recording requirements, Special nuclear material, Source material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 20.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (U.S.C. 5841, 5842, 5846).

2. Section 20.1003 is amended by adding the definitions *Air-purifying respirator, Assigned protection factor (APF), Atmosphere-supplying respirator, Demand respirator, Disposable respirator, Filtering facepiece (dust mask), Fit factor, Fit test, Helmet, Hood, Loose-fitting facepiece, Negative pressure respirator, Positive pressure respirator, Powered air-purifying respirator (PAPR), Pressure demand respirator, Qualitative fit test (QLFT), Quantitative fit test (QNFT), Self-contained breathing apparatus (SCBA), Supplied-air respirator (SAR) or airline respirator, Tight-fitting facepiece* and *User seal check* (*fit check*) (in alphabetical order) to read as follows:

§ 20.1003 Definitions.

* * * * *

Air-purifying respirator means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

* * * * *

Assigned protection factor (APF) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

Atmosphere-supplying respirator means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

* * * * *

Demand respirator means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

* * * * *

Disposable respirator means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

* * * * *

Filtering facepiece (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

Fit factor means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

Fit test means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

* * * * *

Helmet means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

* * * * *

Hood means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

* * * * *

Loose-fitting facepiece means a respiratory inlet covering that is designed to form a partial seal with the face.

* * * * *

Negative pressure respirator (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

* * * * *

Positive pressure respirator means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

Pressure demand respirator means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

* * * * *

Qualitative fit test (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

* * * * *

Quantitative fit test (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

* * * * *

Self-contained breathing apparatus (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

* * * * *

Supplied-air respirator (SAR) or *airline respirator* means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

* * * * *

Tight-fitting facepiece means a respiratory inlet covering that forms a complete seal with the face.

* * * * *

User seal check (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

* * * * *

Subpart H—Respiratory Protection and Controls to Restrict Internal Exposure

3. Section 20.1701 is revised to read as follows:

§ 20.1701 Use of process or other engineering controls.

The licensee shall use, to the extent practical, process or other engineering controls (*e.g.*, containment, decontamination, or ventilation) to control the concentration of radioactive material in air.

4. Section 20.1702, is revised to read as follows:

§ 20.1702 Use of other controls.

(a) When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means—

(1) Control of access;

(2) Limitation of exposure times;

(3) Use of respiratory protection equipment; or

(4) Other controls.

(b) If the licensee performs an ALARA analysis to determine whether or not respirators should be used, the licensee

may consider safety factors other than radiological factors. The licensee should also consider the impact of respirator use on workers' industrial health and safety.

5. Section 20.1703 is revised to read as follows:

§ 20.1703 Use of individual respiratory protection equipment.

If the licensee assigns or permits the use of respiratory protection equipment to limit the intake of radioactive material,

(a) The licensee shall use only respiratory protection equipment that is tested and certified by the National Institute for Occupational Safety and Health (NIOSH) except as otherwise noted in this part.

(b) If the licensee wishes to use equipment that has not been tested or certified by NIOSH, or for which there is no schedule for testing or certification, the licensee shall submit an application to the NRC for authorized use of this equipment except as provided in this part. The application must include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. This must be demonstrated either by licensee testing or on the basis of reliable test information.

(c) The licensee shall implement and maintain a respiratory protection program that includes:

(1) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

(2) Surveys and bioassays, as necessary, to evaluate actual intakes;

(3) Testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

(4) Written procedures regarding—

(i) Monitoring, including air sampling and bioassays;

(ii) Supervision and training of respirator users;

(iii) Fit testing;

(iv) Respirator selection;

(v) Breathing air quality;

(vi) Inventory and control;

(vii) Storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(viii) Recordkeeping; and

(ix) Limitations on periods of respirator use and relief from respirator use;

(5) Determination by a physician that the individual user is medically fit to use respiratory protection equipment; before

(i) The initial fitting of a face sealing respirator;

(ii) Before the first field use of non-face sealing respirators, and

(iii) Either every 12 months thereafter, or periodically at a frequency determined by a physician.

(6) Fit testing, with fit factor ≥ 10 times the APF for negative pressure devices, and a fit factor ≥ 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing must be performed with the facepiece operating in the negative pressure mode.

(d) The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(e) The licensee shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee shall provide for vision correction, adequate communication, low temperature work environments, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator.

(f) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself. The standby persons must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(g) Atmosphere-supplying respirators must be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G–7.1, ''Commodity Specification for Air,'' 1997 and included in the regulations of the Occupational Safety and Health Administration (29 CFR 1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include—

(1) Oxygen content (v/v) of 19.5–23.5%;

(2) Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;

(3) Carbon monoxide (CO) content of 10 ppm or less;

(4) Carbon dioxide content of 1,000 ppm or less; and

(5) Lack of noticable odor.

(h) The licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face—facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(i) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

6. Section 20.1704 is revised to read as follows:

§ 20.1704 Further restrictions on the use of respiratory protection equipment.

The Commission may impose restrictions in addition to the provisions of §§ 20.1702, 20.1703, and Appendix A to Part 20, in order to:

(a) Ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(b) Limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

7. Section 20.1705 is added to subpart H as follows:

§ 20.1705 Application for use of higher assigned protection factors.

The licensee shall obtain authorization from the Commission before using assigned protection factors in excess of those specified in Appendix

A to Part 20. The Commission may authorize a licensee to use higher assigned protection factors on receipt of an application that—

(a) Describes the situation for which a need exists for higher protection factors; and

(b) Demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

8. Appendix A to Part 20 is revised to read as follows:

APPENDIX A TO PART 20.—ASSIGNED PROTECTION FACTORS FOR RESPIRATORS [a]

	Operating mode	Assigned Protection Factors
I. Air Purifying Respirators [Particulate [b] only] [c]:		
Filtering facepiece disposabled	Negative Pressure	([d])
Facepiece, half [e]	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Powered air-purifying respirators	50
Facepiece, full	Powered air-purifying respirators	1000
Helmet/hood	Powered air-purifying respirators	1000
Facepiece, loose-fitting	Powered air-purifying respirators	25
II. Atmosphere supplying respirators [particulate, gases and vapors [f]]:		
1. Air-line respirator:		
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Facepiece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	([g])
2. Self-contained breathing Apparatus (SCBA):		
Facepiece, full	Demand	[i] 100
Facepiece, full	Pressure Demand	[i] 10,000
Facepiece, full	Demand, Recirculating	[i] 100
Facepiece, full	Positive Pressure Recirculating	[i] 10,000
III. Combination Respirators:		
Any combination of air-purifying and atmosphere-supplying respirators.	Assigned protection factor for type and mode of operation as listed above.	

[a] These assigned protection factors apply only in a respiratory protection program that meets the requirements of this Part. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances must also comply with Department of Labor regulations.

Radioactive contaminants for which the concentration values in Table 1, Column 3 of Appendix B to Part 20 are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

[b] Air purifying respirators with APF <100 must be equipped with particulate filters that are at least 95 percent efficient. Air purifying respirators with APF = 100 must be equipped with particulate filters that are at least 99 percent efficient. Air purifying respirators with APFs >100 must be equipped with particulate filters that are at least 99.97 percent efficient.

[c] The licensee may apply to the Commission for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).

[d] Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in § 20.1703 apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

[e] Under-chin type only. No distinction is made in this Appendix between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient and all other requirements of this Part are met.

[f] The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

[g] No NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (i.e., § 20.1703).

[h] The licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

[i] This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

Dated at Rockville, Maryland this 30th day of September, 1999.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 99–25977 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–165a; FRL–6448–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. This action revises Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 102, Definitions, to include text that was inadvertently omitted and revises the volatile organic compound (VOC) definition in South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms. The intended effect of approving this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions.

DATES: This rule is effective on December 6, 1999, without further notice, unless EPA receives adverse comments by November 8, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at Region IX office listed below. Copies of these rules, along with EPA's evaluation report for each rule, are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted requests for rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, California 93117

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are: SBCAPCD Rule 102, Definitions, and SCAQMD Rule 102, Definition of Terms, submitted on May 13, 1999 by the California Air Resources Board.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included Santa Barbara County and the South Coast Air Basin, see 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the Santa Barbara County APCD and South Coast AQMD portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). In response to the SIP call and other requirements, the SBCAPCD and SCAQMD submitted many rules which EPA approved into the SIP.

This document addresses EPA's direct-final action for SBCAPCD Rule 102, Definitions, and SCAQMD Rule 102, Definition of Terms. These rules were adopted by SBCAPCD and SCAQMD on January 21, 1999 and June 12, 1998, respectively. These rules were found to be complete on June 10, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [1] and is being finalized for approval into the SIP. These rules were originally adopted as part of SBCAPCD and SCAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement.

The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements appears in various EPA policy guidance documents.[2]

EPA previously reviewed many rules from the SBCAPCD and SCAQMD agencies and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA. The following revisions were made in SBCAPCD and SCAQMD definitions rule:

Santa Barbara County APCD

On March 26, 1999, EPA approved into the SIP a version of Rule 102, Definitions that had been adopted by SBCAPCD on March 10, 1998. SBCAPCD submitted Rule 102, Definitions includes the following changes from the current SIP:

Rule 102 has been revised by reinserting text inadvertently omitted during the April 1997 comprehensive revisions to the District's permitting regulations.

South Coast AQMD

On March 26, 1999, EPA approved into the SIP a version of Rule 102, Definition of Terms that had been adopted by SCAQMD on June 13, 1997. SCAQMD submitted Rule 102, Definitions of Terms includes the following changes from the current SIP:

The March 13, 1998 amendments add difluoromethane (HFC-32), 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$), 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane [$(CF_3)_2CFCF_2OCH_3$], 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$), and 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane [$(CF_3)_2CFCF_2OC_2H_5$]

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section (110)(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviation, Clarification to appendix D of November 24, 1987 **Federal Register** document'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

to the definition of Rule 102, Definition of Terms.

The June 12, 1998 amendments add parachlorobenzotrifluoride (PCBTF), ethylfluoride (HFC-161), 1,1,1,3,3,3-hexafluoropropane (HFC-236fa), 1,1,2,2,3-pentafluoropropane (HFC-245ca), 1,1,2,3,3-pentafluoropropane (HFC-245ea), 1,1,1,2,3-pentaflurorpropane (HFC-245eb), 1,1,1,3,3-pentafluoropropane (HFC-245fa), 1,1,1,2,3,3-hexafluoropropane (HFC-236ea), 1,1,1,3,3-pentafluorobutane (HFC-365mfc), chlorofluoromethane (HCFC-31), 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a), and 1 chloro-1-fluoroethane (HCFC-151a) to the definition of Rule 102, Definition of Terms.

Rule 102 has been revised to update the definition of ''Exempt Organic Compounds'' to be consistent with the most recent federal and state definitions changes. See 62 FR 44900.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SBCAPCD Rule 102, Definitions and SCAQMD Rule 102, Definition of Terms, are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Future action by EPA on prohibitory, new source review, or other SBCAPCD rules may require changes to these definitions.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 6, 1999 without further notice unless the Agency receives relevant adverse comments by November 8, 1999.

If the EPA received such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on the this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 6, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would

constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title of 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(263)(i)(A)(2) and (B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(263) * * *

(i) * * *

(A) * * *

(2) Rule 102 adopted on February 4, 1977 and amended on June 12, 1998.

(B) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102 adopted on January 21, 1999.

* * * * *

[FR Doc. 99–26068 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[IB Docket No. 98–192; FCC 99–236]

In the Matter of Direct Access to the INTELSAT System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts a policy to permit Level 3 direct access to the International Telecommunications Satellite Organization (''INTELSAT'') satellite system from earth stations within the United States, for the purpose of providing international satellite services. As a result of this decision, U.S. carriers and users of INTELSAT may enter into contractual agreements with INTELSAT for ordering, receiving, and paying for services at the same rates INTELSAT charges its Signatories, *in lieu* of having to go exclusively through Comsat, the U.S. Signatory to INTELSAT. Comsat is permitted, however, to file a tariff with the Commission that requires Level 3 direct access customers to reimburse it for certain costs incurred in its unique role as the U.S. Signatory to INTELSAT. The document denies requests made by telecommunications carriers for ''fresh look'' at their long-term contracts with Comsat and ''portability'' of the INTELSAT space segment capacity they use that is held by Comsat. Finally, the document limits involvement by dominant foreign INTELSAT Signatories under a specific circumstance and requires that INTELSAT waive its immunities under certain limited circumstances. With this decision, the United States joins 94 other INTELSAT signatory countries that already permit direct access to INTELSAT from earth stations within their countries. Implementing direct access from the United States will lower prices, enhance competition, and lead to greater efficiency and flexibility in the use of INTELSAT space segment capacity.

DATES: Effective December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Michael McCoin, International Bureau, Satellite Policy Branch, (202) 418–0774, or email at mmccoin@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 98–192, FCC 99–236, adopted September 15, 1999, and released September 16, 1999. The complete text of this Commission *Report and Order* is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., or may be purchased from the Commission's duplicating contractor, International Transcription Service, (202) 857–3800, 2131 M Street, N.W., Washington, D.C. 20036. The complete text is also available under the file name

fcc99236.wp on the Commission's internet site at http://www.fcc.gov/Bureaus/International/Orders/1999.

Summary of the Report and Order

1. This *Report and Order* permits Level 3 direct access to the INTELSAT satellite system from earth stations in the United States for the provision of international satellite services, subject to certain conditions and limitations. The Report and Order affirms the Commission's tentative conclusions in the Notice [1] that the Commission has authority under the Communications Satellite Act of 1962 (''Satellite Act'') to permit Level 3 direct access and that such action would not be a ''taking'' of private property without ''just compensation'' under the Fifth Amendment to the United States Constitution. The document concludes that direct access is in the public interest. Specifically, the Commission finds that direct access will result in (1) cost savings, greater efficiency, flexibility, and control over facility use by U.S. customers; (2) competitive pressure on Comsat rates and the rates of competing satellite operators; and (3) enhance the ability of U.S. carriers to compete globally with foreign counterparts that already may obtain satellite capacity directly from INTELSAT.

2. INTELSAT is a 143 member intergovernmental organization that owns and operates a global system of satellites. It is located in Washington, D.C. and is a key provider of satellite transmission capacity for both U.S. commercial and governmental use. In 1992, INTELSAT developed procedures for non-Signatories to obtain space segment capacity directly from INTELSAT rather than requiring access through the national Signatory. Level 3 direct access requires a customer to enter into a service agreement with INTELSAT that sets forth the general terms and conditions for INTELSAT supply of its space segment capacity. Through the service agreement, a customer is able to access INTELSAT space segment directly at INTELSAT tariff rates, known as INTELSAT Utilization Charges (''IUC''). Level 3 direct access customers have no investment obligations in the INTELSAT system and no governance rights within the organization. A Signatory, such as Comsat, permitting Level 3 direct access would still earn a return on its investment in proportion to space segment capacity used by a Level 3 direct access customer in its country (currently between 14 and 18 percent).[2]

3. The Commission initiated this proceeding as a result of requests in an earlier proceeding by United States carriers and other users of INTELSAT to permit direct access to the INTELSAT system as a condition for granting Comsat non-dominant status in its provision of INTELSAT services.[3] Although the Commission did not require that direct access be permitted as a condition to granting Comsat non-dominant status, it committed to initiating this proceeding ''expeditiously to explore the legal, economic, and policy ramifications of direct access.'' [4] In the *Notice*, the Commission tentatively concluded that the Commission has authority under the Satellite Act and the Communications Act of 1934 (''Communications Act'') to permit United States carriers and other users to obtain Level 3 direct access to the INTELSAT system. The *Notice* requested comment on whether Level 3 direct access would result in benefits to carriers, other users, and end users, and whether it would enhance competition.

4. In adopting this policy, the Commission concludes that Level 3 direct access will benefit U.S. INTELSAT customers in the form of a cost savings of between 10 and 71 percent off Comsat tariff rates. The document notes, however, that because Comsat must continue to incur expenses in its role as the U.S. Signatory to INTELSAT, the Commission will allow it to require that direct access customers pay Comsat a surcharge to recover certain Signatory expenses. The Commission finds that a 5.58 percent surcharge to be reasonable based on the record before us. Comsat will be allowed to file a tariff with the Commission to collect the surcharge.

5. To guard against unfair competitive distortions in the U.S. market, the Commission limits in the United States direct access participation of INTELSAT Signatories or affiliates that control 50 percent or more of all the INTELSAT capacity consumed in that Signatory or affiliate's respective home market. These Signatories, however, will still be allowed Level 3 direct access from the United States to locations other than these markets. The *Report and Order* states that this limitation will remove the incentive for Signatories to support the lowering of INTELSAT tariff rates to uneconomic levels—levels that do not reflect INTELSAT's full costs of providing direct access in the U.S. market.

6. The Commission also states that it would expect INTELSAT to voluntarily waive its immunity from suit and process to cover any direct marketing of services and any negotiation of agreements with U.S. carriers that would lead to the provision of services and rates not included in the INTELSAT IUC or pursuant to service agreements different from what INTELSAT generally offers under Level 3 direct access.

7. The Commission does not grant the requests of carriers seeking fresh look at their long term carrier contracts with Comsat for INTELSAT space segment capacity. The *Report and Order* concludes that the carriers had not met the standard for fresh look and that the circumstances surrounding the consummation of these contracts supports leaving them as is. This Commission also did not act on carriers requests for portability of their INTELSAT capacity, obtained through Comsat, because the current record is insufficient. Specifically, the *Report and Order* noted that there is no evidence that INTELSAT capacity will not be available due to Comsat's control of INTELSAT spectrum capacity from the United States. The Commission, however, said it would consider the issue of portability if direct access customers demonstrate that Comsat's control of space segment capacity prevents realization of direct access benefits, and commercial solutions do not appear available.

Final Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice* to this *Report and Order*. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). *See In the Matter of Direct Access to the INTELSAT System*, IB Docket No. 98–192, File No. 60 SAT–ISP–97, Notice of Proposed Rulemaking,

[1] *In the Matter of Direct Access to the INTELSAT System*, IB Docket No. 98–192, File No. 60–SAT–ISP–97, Report and Order, 63 FR 58755, (November 5, 1998) (''*Notice*'').

[2] Under the INTELSAT Operating Agreement, the Board of Governors establishes a target rate of compensation (return) for shareholders' (''Signatories'') invested capital. All shareholders are entitled to the target rate of return, which is periodically adjusted by the INTELSAT Board of Governors. *See* INTELSAT Operation Agreement, Article 8.

[3] *Comsat Corporation Petition pursuant to Section 10(c) of the Communications Act of 1939, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, FCC 98–78, 63 FR 25811, (May 11, 1998) (''*Comast Non-Dominant Order*'').

[4] *Comsat Non-Dominant Order*, 63 FR 25811.

13 FCC Rcd 22013, 22052–54 (1998). The Commission then sought written public comment in that proceeding, including comments on the IRFA. No party filed comments in response to the IRFA. This *Report and Order* promulgates no new rules and our action here does not affect the previous analysis in the *Notice*. The Commission certifies that there will be no significant effect on a substantial number of small entities.

A. Need for and Objectives of Rules

9. In this *Report and Order*, the Commission permits direct access to the INTELSAT satellite system, *in lieu* of users having to obtain service through Comsat Corporation. This will result in a variety of benefits to users and ultimately consumers including: cost savings of between 10–71 percent over Comsat rates, greater efficiency, and flexibility and control over facility use. In addition, this action will place competitive pressure on the current rates for satellite capacity and enable U.S. carriers to compete more effectively globally.

B. Summary of Significant Issues Raised by Public Comments in Response to the Regulatory Flexibility Analysis

10. No comments were submitted in direct response to the RFA.

C. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply

11. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business'', ''small organization'', and ''small governmental jurisdiction''. See 5 U.S.C. 601(6). The RFA has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (''CWAAA''). See 5 U.S.C. 601 *et seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which (1) is independently owned and operated, (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

12. The Commission has not developed a definition of small entities specifically applicable to this situation. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, ''Not Elsewhere Classified.'' This definition provides that a small entity is one with no more than $11 million annual receipts. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4899. According to the Census Bureau data, there were a total of 848 communications services in operation in 1992 that fall under the category of Communications Services, Not Elsewhere Classified. Of those, approximately 775 reported annual receipts of $9.999 million or less and qualify as small entities. 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration). The census report does not provide more precise data. Comsat Corporation and Lockheed Martin would be the only business affected by the policy enacted in this *Report and Order*. Each of their annual receipts are in excess of $11.0 million and, therefore, cannot be classified as a ''small business.'' Accordingly, the number of small businesses impacted by the policy change here is zero.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

13. The procedures for implementing Level 3 direct access to the INTELSAT system from the United States, including the surcharge element, will consist of several elements. Subsequent to release and publication in the **Federal Register**, the International Bureau shall issue a Public Notice establishing a 21-day period (from the date of the public notice) for eligible carriers and users to notify the Commission in writing that they want Level 3 direct access to INTELSAT. The public notice also will specify the name and address for filing any such notification. The International Bureau will forward the names of all the eligible U.S. carriers and users to Comsat. Comsat shall be required to inform INTELSAT within ten days of receiving these eligible names that they are authorized to obtain Level 3 direct access from INTELSAT without further approval of the U.S. Signatory—Comsat—consistent with the procedures established by INTELSAT that permits ''blanket authorizations'' for Level 3 direct access. Any eligible carriers and users, not part of the initial ''blanket authorization'' request sent to INTELSAT, may request that Comsat add them to the list of carriers and users eligible for Level 3 direct access ''blanket authorizations.'' Comsat will be required to inform INTELSAT within ten days of receiving each such subsequent request. Within 60 days after publication in the **Federal Register** of this Report and Order, Comsat may file, on one day's notice, a tariff of the terms and conditions of surcharges applicable to U.S. Level 3 direct access customers, consistent with the findings in this Report and Order. The carriers and users obtaining Level 3 direct access from INTELSAT shall pay Comsat the surcharge specified in Comsat's effective tariff that is applicable to the services obtained from INTELSAT. Finally, Comsat may establish reporting mechanisms with INTELSAT for the limited purpose of assuring that Comsat can identify the appropriate surcharge that U.S. direct access customers must pay Comsat upon receipt of service from INTELSAT under Level 3 direct access. Comsat may take appropriate steps through INTELSAT to terminate a customer's Level 3 direct access status for failure to pay the appropriate surcharge.

E. Steps Taken To Minimize Significant Economic Burden on Small Entities, and Significant Alternatives Considered

14. This *Report and Order* promulgates no new rules or policies that would effect small business concerns. The policies it does advance, however, should positively impact competition in the satellite services market.

Report to Congress

15. The Commission shall send a copy of this *Report and Order*, including the status of the FRFA in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). Since this *Report and Order* promulgates no new rules and does not affect the IRFA in the *Notice*, it is not necessary to publish an FRFA in the **Federal Register**.

Ordering Clauses

16. Accordingly, *it is ordered*, that, pursuant to Sections 102 and 201(c)(2), (7) and (11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701 and 721(c)(2), (7) and (11),

and 1, 2, 4(c), 201, 202, 214, 301, 303, 307, 308 and 309, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(c), 201, 202, 214, 301, 303, 307, 308 and 309 that on December 6, 1999 Level 3 direct access to INTELSAT shall be available to carriers and users authorized to obtain INTELSAT space segment capacity for the provision of telecommunications services to and from the United States in accordance with the terms and conditions of this Report and Order and those established by INTELSAT to implement Level 3 direct access.

17. *It is further ordered* that, following publication in the **Federal Register** of this Report and Order, the International Bureau shall release a Public Notice requesting authorized carriers and users desiring to obtain Level 3 direct access to INTELSAT to so inform the Commission within 21 days of the release of the Public Notice.

18. *It is further ordered,* that, in its capacity as the U.S. Signatory to INTELSAT, and in accordance with procedures established by INTELSAT permitting ''blanket authorizations'' for Level 3 direct access, Comsat shall inform INTELSAT in writing within ten calendar days of receiving the information from the International Bureau that the identified authorized carriers and users responding to the Public Notice may obtain Level 3 direct access from INTELSAT on the effective date of this Report and Order, as provided in paragraphs 206 and 216, without further approval of the U.S. Signatory.

19. *It is further ordered,* that, authorized carriers and users, not identified as part of the initial ''blanket authorization'' sent to INTELSAT by Comsat, may request Comsat to request adding them to the list of named carriers and users eligible for Level 3 direct access and Comsat shall so inform INTELSAT within ten days of receiving each such subsequent request.

20. *It is further ordered,* that, within 60 days of publication in the **Federal Register** of this Report and Order, Comsat may file, on one day's notice, a tariff of the terms and conditions of the surcharge applicable to U.S. Level 3 direct access customers which shall be consistent with findings in the Report and Order.

21. *It is further ordered,* that, authorized carriers and users obtaining Level 3 direct access from INTELSAT shall pay Comsat the surcharge specified in Comsat's effective tariff that is applicable to the services obtained from INTELSAT.

22. *It is further ordered,* that, in its role as the U.S. Signatory, Comsat may establish reporting mechanisms with INTELSAT for the limited purpose of assuring that Comsat can identify the appropriate surcharge that U.S. direct access customers must pay Comsat upon receipt of service from INTELSAT under Level 3 direct access.

23. *It is further ordered,* that, Comsat's tariff may provide that failure to pay the appropriate surcharge will result in loss of a customer's Level 3 direct access privileges.

24. *It is further ordered,* that the Comsat Corporation MOTION TO STRIKE the *ex parte* filing submitted by counsel for the Satellite Users Coalition, IS DENIED.[5]

25. *It is further ordered,* that, the Commission's Office of Managing Director shall send a copy of this Report and Order, including Final Regulatory, Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

26. *It is further ordered,* that policies and requirements established in this Report and Order shall take effect December 6, 1999, or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507, whichever occurs later.

List of Subjects in 47 CFR Chapter 1

Communications common carriers, Telecommunications.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26148 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

[5] Comsat moves to strike the filing on September 9, 1999 by the Satellite Users Coalition giving notice of an *ex parte* presentation it made to Commission staff the previous day, prior to release of the Sunshine Notice. *See* Letter from Comsat Corporation to the Secretary, Federal Communications Commission, dated September 9, 1999. *See also* Opposition to Motion to Strike by Satellite Users Coalition, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 13, 1999). *See also* Comsat Reply to Opposition to Motion to Strike, IB Docket No. 98–192, File No. 60–SAT–ISP–97 (Sept. 14, 1999). Comsat contends that receipt of this required filing the following day, by staff not present at the September 8, 1999 meeting, constituted a violation of our *ex parte* rules which prohibits presentations to decision-makers on matters listed on the Commission's Agenda. *See* 47 CFR 1.1203(a). However, the oral and other information provided by the Satellite Users Coalition on September 8, 1999, was constructively available to all Commission decision-makers on that date. In addition, the Satellite Users Coalition was required to file this information for the public record by the end of the next day in accordance with Section 1.1206(b) of our rules. 47 CFR 1.1206(b). As a result, service on decision-makers not present at the September 8 meeting did not constitute a violation of Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 22

[WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252; FCC 99–244]

1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document completes the Commission's re-assessment of the 45 MHz Commercial Mobile Radio Service (CMRS) spectrum cap and cellular cross-interest rules initiated as part of our 1998 biennial review of the Commission's regulations pursuant to section 11 of the Communications Act. After careful analysis and extensive review of the rules and the record in this proceeding, the Commission concludes that at this time the spectrum cap and cellular cross-interest rules continue to be necessary to promote and protect competition in CMRS markets. However, the Commission finds that it is appropriate to modify both rules to allow some greater cross-ownership at this time. The Commission adopts a modest increase in the spectrum cap's current aggregation limit in rural areas to reflect the differing costs and benefits of limits on spectrum aggregation in rural areas, and a separate attribution benchmark of 40 percent for passive institutional investors. The Commission amends the cellular cross interest rule by increasing the attribution benchmarks used in the rule. Finally, as part of this proceeding, the Commission denied a petition to forbear from enforcement of the CMRS spectrum cap filed by the Cellular Telecommunications Industry Association (CTIA).

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: David Krech or Pieter van Leeuwen, Commercial Wireless Division, Wireless Telecommunications Bureau, (202) 418–0620.

SUPPLEMENTARY INFORMATION: This *Report and Order* in WT Docket Nos. 98–205, 96–59, GN Docket No. 93–252, adopted September 15, 1999, and released September 22, 1999, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 230, 1919 M Street N.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service,

Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800.

Synopsis of the Report and Order

I. Background

A. CMRS Spectrum Cap

1. *The CMRS Spectrum Cap*. Under the CMRS spectrum cap, ''[n]o licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS [] shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular and SMR spectrum regulated as CMRS with significant overlap in any geographic area.'' 47 CFR 20.6(a). A ''significant overlap'' of a PCS licensed service area and CGSA(s) and SMR service area(s) occurs when at least ten percent of the population of the PCS licensed service area is within the cellular geographic service area and/or SMR service area(s). 47 CFR 20.6(b).

2. *History of the Spectrum Cap*. The CMRS spectrum cap was established in Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, *Third Report and Order*, 59 FR 59945 (November 21, 1994) (*CMRS Third Report and Order*). Prior to the adoption of the CMRS spectrum cap, the Commission had imposed service-specific limitations on aggregation of broadband PCS spectrum and on cellular/PCS cross-ownership. In adopting a general, multiple service cap in addition to the PCS/cellular ownership rules, the Commission explained that an overall spectrum cap for CMRS would add certainty to the marketplace without sacrificing the benefits of pro-competitive and efficiency-enhancing aggregation. The Commission found that if licensees were to aggregate sufficient amounts of CMRS spectrum, it would be possible for them, unilaterally or in combination, to exclude efficient competitors, to reduce the quantity or quality of services provided, or to increase prices to the detriment of consumers. The Commission found that a 45 MHz cap provided a ''minimally intrusive means'' for ensuring that the mobile communications marketplace remained competitive and preserved incentives for efficiency and innovation. The Commission further clarified that certain business relationships could give rise to attributable ownership interests for purposes of the CMRS spectrum cap. Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, Fourth Report and Order, 59 FR 61828 (December 2, 1994) (*CMRS Fourth Report and Order*).

3. In 1996, the Commission reaffirmed the basic tenets of the CMRS spectrum cap and provided additional economic rationale for its use. Amendment of parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular/PCS Cross-Ownership Rule, WT Docket No. 96–59, GN Docket No. 90–314, *Report and Order*, 61 FR 33859 (July 1, 1996) (*CMRS Spectrum Cap Report and Order, recon. (BellSouth MO&O) aff'd. sub nom. BellSouth Corporation* v. *FCC*, 162 F.3d 1215 (D.C. Cir. 1999). The Commission found that such a spectrum cap would help ensure competition and would address concerns about potential anticompetitive behavior in CMRS markets. The Commission also reconsidered, but did not alter, the 20 percent ownership attribution standard. It did, however, adopt a four-pronged test under which it would review requests for waiver of the standard. The Commission also declined to alter the geographic attribution standard. In 1997, the Commission has also clarified that the CMRS spectrum cap is not limited to real-time, two-way switched telephone service, but covers a variety of services within the definition of CMRS. The D.C. Circuit affirmed this position, and declined to impose a distinction between voice and non-voice SMR in the context of spectrum acquisition. The court instead found the inclusion of all SMR spectrum in the cap, including those frequencies used to provide data services, to be reasonable. *BellSouth* v. *FCC*, 162 F.3d 1215 (1999).

B. Cellular Cross-Interest Rule

4. *The Rule*. 47 CFR 22.942 prohibits any person from having a direct or indirect ownership interest in licensees for both cellular channel blocks in overlapping CGSAs. A party with a controlling interest in a licensee for one cellular channel block may not have any direct or indirect ownership interest in the licensee for the other channel block in the same geographic area. A party may, however, have a direct or indirect ownership interest of five percent or less in the licensees for both channel blocks so long as neither of those interests is controlling. 47 CFR 22.942(a). Divestiture of interests as a result of an assignment of authorization or transfer of control must occur prior to the consummation of the transfer or assignment. 47 CFR 22.942(b).

5. *History of the Cellular Cross-Interest Rule*. The cellular cross-interest rule was adopted in 1991 in order to guarantee the competitive nature of the cellular industry and to foster the development of competing systems.

C. Notice of Proposed Rulemaking

6. In the Notice of Proposed Rulemaking in this proceeding, we sought comment initiated this re-evaluation of the CMRS spectrum cap as part of our 1998 biennial regulatory review. 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket No. 98–205, *Notice of Proposed Rulemaking*, 63 FR 70727 (Dec. 22, 1998) (*NPRM*). The *NPRM* requested comment on whether the Commission should retain, modify or repeal the spectrum cap. Specific options set forth in the *NPRM* included: (1) Modification of the significant overlap threshold; (2) modification of the 45 MHz limitation; (3) modification of the ownership attribution thresholds; (4) forbearance from enforcing the spectrum cap; (5) sunsetting the spectrum cap; and (6) elimination of the spectrum cap. The NPRM also sought comment on whether to retain, modify, or repeal the cellular cross-interest rule. In addition, the NPRM incorporated a petition filed by CTIA on September 30, 1998, requesting that the Commission forbear from enforcing the CMRS spectrum cap pursuant to section 10 of the Communications Act. Twenty-five parties filed comments on the *NPRM*, and fifteen parties filed reply comments.

II. Report and Order

A. Assessment of the Need for the Spectrum Cap and Cellular Cross-Interest Rules

7. The Commission concludes that bright-line spectrum cap and cellular cross-interest rules remain necessary to serve the public interest at this time. The Commission also determines that both our spectrum cap and cellular cross-interest rules are appropriate and effective tools to be used in conjunction with our case-by-case reviews under 47 U.S.C. 310(d) as we evaluate proposed mergers and acquisitions.

1. Public Policy Objectives

8. The Commission's re-evaluation of the need for CMRS spectrum aggregation limits and cellular cross-interest limits is guided by four central principles. First, the operation of market forces generally better serves the public interest than regulation. As a general matter of principle, we prefer to place ultimate reliance on the market, rather than on regulation, to direct the course of development in the CMRS and other markets. Second, we intend to foster vigorous competition in all

telecommunications markets. In particular, we wish to ensure that there are no regulatory impediments to the evolution of wireless carriers into more effective competitors vis-à-vis the local wireline telephone companies. Third, we seek to secure the benefits of modern telecommunication services, including wireless services, for all areas of our Nation, including high-cost and rural areas. Finally, our regulations must promote, rather than impede, the introduction of innovative services and technological advances.

2. Current State of CMRS Competition and the Spectrum Cap

9. There is considerable evidence that competition is steadily growing in many CMRS markets. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Fourth Report*, FCC 99–136 (rel. June 24, 1999) (*Fourth Annual CMRS Competition Report*). Commenters generally agree that considerable progress has been made in recent years toward more competitive CMRS markets. There is also general agreement that further progress toward competitive CMRS markets can be anticipated. Nevertheless, commenters remain sharply divided in their assessments of the current state of competition in these markets. Those favoring retention of a spectrum cap typically distinguish among the various wireless product markets and highlight barriers to entry over the near term, most notably, the need to secure spectrum rights before they can enter these markets. Commenters favoring elimination of the cap tend to define markets broadly, raise *de novo* entry prospects associated with future spectrum auctions, and predict dramatic changes from the adoption of third generation (3G) wireless network technologies, such as IMT–2000.

10. Although we agree that competition is increasing in CMRS markets, we find that there remain significant reasons to be concerned about the effects of undue concentration of CMRS spectrum. Even in major metropolitan markets, where numerous competitors are offering mobile voice services, in almost all markets the two cellular carriers still have in excess of 70 percent of the customers. In addition, the amount of CMRS spectrum is fixed, and the discipline of market forces is tempered by the reality that would-be market entrants must obtain spectrum rights, which in practical terms requires that they find willing sellers.

11. We also observe that, by and large, the current 45 MHz spectrum aggregation limit does not appear to be constraining carriers. Generally, PCS carriers have not yet deployed capacity up to the limits of their licensed capacity. In addition, very few cellular carriers have acquired spectrum up to the permissible limit. We also have received only a handful of waiver requests to exceed the cap. Consequently, at least for now, we determine that our spectrum cap rule has not significantly constrained carriers in their ability to provide service at low cost, deploy new services, or commit to innovation. Recognizing the speed with which the industry is changing and the biennial review mandate of the 1996 Act, however, we will revisit these issues as part of our year 2000 biennial review. We decline to adopt a sunset for either the spectrum cap or the cellular cross-interest rule at this time. As we discuss in this Order, competition in CMRS markets is changing rapidly. We do not believe that at this time we can accurately predict when it would be proper to eliminate either of these two rules. We believe it is more appropriate at this time to reassess the state of CMRS markets, and the continuing need for these rules, as part of our year 2000 biennial review.

3. Assessment of the State of CMRS Competition and the Effects of Possible Spectrum Consolidation

a. *Analytical Framework*. 12. In determining whether to eliminate, sunset, or modify the spectrum cap and cellular cross-interest rules we take into consideration several factors. One factor that must be considered is the ease or difficulty with which competitors can enter CMRS markets. Our assessment must also take into account the effect of the relevant rules on the long-term prospects for competition in CMRS markets. Finally, when evaluating the spectrum cap and cellular cross-interest rules, we must consider the potential risk of re-concentration in CMRS markets. We are particularly concerned about the possibility of coordinated behavior among CMRS carriers.

b. *Discussion*. 13. *Market Entry*. With respect to market entry, ''entry is * * * easy if entry would be timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern.'' *Merger Guidelines* at § 3.0. In particular, we note that antitrust authorities ''will consider timely only those committed entry alternatives that can be achieved within two years from initial planning to significant market impact.'' *Merger Guidelines* at § 3.2. Because a license for use of government spectrum is required to provide CMRS, we must conclude that entry into CMRS markets is not ''easy.'' Markets function optimally only if one or more firms are able to enter a market or expand current production swiftly and effectively in response to the elevation of prices (or degradation of service) by one or more firms attempting to exercise market power. We believe that barriers to entry are significant, and that the current state of competition requires continued vigilance over at least the near term.

14. *Prospects for Long-Term Competition*. Turning to the second factor, long-term prospects for competition, there is little dispute in the record that considerable progress has been made toward the goal of promoting competition in CMRS markets, but many commenters question whether an adequate array of competitive options is now available to all of the nation's wireless consumers. The Commission has had prior occasion to point out the continuing need to promote competition and the entrance of new participants in the CMRS markets even after broadband licenses were awarded. Given the ongoing impediments to entry into broadband CMRS markets, we believe that our spectrum cap and cellular cross-interest rules continue to serve our competition goals.

15. Moreover, despite enormous progress in the past few years, the broadband PCS sector remains in the early stages of deployment. While many carriers are offering service now, facilities-based coverage often is provided only to a portion of a new carrier's potential market. Additionally, many licensees have yet to begin offering service at all, and some have yet to begin constructing their networks. In this regard, we find while our public interest standard and the Sherman and Clayton Acts can deal with potential rather than actual competition, the spectrum cap is a particularly effective way of addressing concerns related to the loss of potential competition.

16. Our concern that competition in CMRS markets is not fully developed is supported by the fact that, as conventional analyses of market concentration show, even the largest urban markets for mobile telephone services remain quite concentrated. We find persuasive the submissions by several commenters with data on market concentration in urban markets for mobile voice services. In addition, the Department of Justice (DOJ) recently found that market concentration in the fourteen markets in which SBC and Ameritech both control cellular licenses was in the range of 3200 to 4100, well

above the 1800 threshold at which the DOJ normally considers a market to be concentrated.

17. The data in the record indicate that in most of the nation's 200 largest markets the two cellular companies together have in excess of 70 percent of mobile phone subscribers. Given the limited deployment of PCS in less densely populated areas, one of these two firms, and in many cases both, likely command market shares in excess of 35 percent.

18. We are not persuaded by the arguments of commenters who urge elimination of the cap based on information other than market shares or concentration as evidence of the competitive nature of CMRS markets. However, the critical issue is whether these and other indicia of increased competition would be threatened by a reconsolidation of the industry. We agree with those commenters who contend that eliminating the spectrum cap at this time could pose such a threat, by enabling reconsolidation to occur.

19. Finally, while we agree with commenters who argue that the use of historical or contemporaneous data on market performance potentially understates the potential competitive impact of new entrants in a dynamic industry and overstates the risks of anticompetitive conduct, we remain concerned about the effects of possible consolidation of CMRS spectrum over the next two years. We are concerned that if we abandon our ownership rules at this time, the competitive success we have seen in these markets may be reversed.

20. *Reconsolidation.* Given the current levels of market concentration discussed above, we are particularly concerned that any reconsolidation in the CMRS markets would either ''potentially raise significant competitive concerns'' or ''create or enhance market power or facilitate its exercise.'' *Merger Guidelines* at §§ 1.51, 2.0. In mature industries, the typical indicia of market power being exercised would be curtailed usage, increased prices, or degraded service. Because of the dynamic nature of CMRS markets, however, we think it more likely that any exercise of market power would be evidenced by a slowing in the rate of growth of new customers and usage, prices falling less rapidly than would otherwise occur, or delays in the introduction of newer services.

21. In this regard, we reject the view of commenters who suggest that consolidation of CMRS markets to as few as three competitors would not adversely affect CMRS competition. We believe that significant benefits of competition are unlikely to be exhausted with the entry of a third carrier. First, the value of additional entry by fourth and fifth competitors need not be manifested solely through falling prices. The benefits of further entry may appear in the form of improved quality, product innovation, and product differentiation. Second, economic theory generally supports the view that additional entry, and the installation of additional capacity, will afford consumers additional benefits, whether through pricing or otherwise. We are persuaded that if mobile voice markets were to stabilize as three-firm oligopolies, recently observed price competition could be reduced or eliminated. Finally, we also draw upon our experience in other telecommunications markets, where consumers generally have benefited from their ability to choose from among more than three firms to obtain the services they desire.

22. We are also not persuaded that the existence of nationwide service and pricing plans substantially eliminates any concern that carriers would amass spectrum in an effort to extract monopoly rents. The fact that a major service provider may offer nationwide service and pricing plans does not, in our view, mean that we should be unconcerned about its level of spectrum accumulation in a particular market. To the contrary, we conclude that the control of excessive spectrum by any single market participant would be a matter of serious concern.

23. At this time, we also reject arguments by commenters for a more broadly defined product market. Consumers obtain mobile phone services principally from cellular, PCS and digital SMR carriers. While consumers may be considering other services as alternatives, no evidence was provided suggesting that these alternatives are capable of constraining competitive behavior in this product market. In the case of mobile voice telephone service, for example, no commenter furnished evidence that consumers perceive any particular alternative communication service as sufficiently interchangeable, such that it could impede a hypothetical monopolist of mobile voice services from profitably elevating prices—the standard test for defining a market. In particular, no evidence was submitted that consumers are switching between mobile voice telephone services and other services in response to changes in relative prices.

4. Benefits of Bright-Line Rules Over Alternative Regulatory Tools

a. *Benefits of Regulatory Certainty and Regulatory Efficiency* 24. By setting bright lines for permissible ownership interests, the spectrum cap and cross-ownership rules benefit the public, the telecommunications industry, and the Commission by providing regulatory certainty and facilitating more rapid processing of transactions. Providing regulatory certainty is particularly important in an environment in which there is likely to be widespread restructuring of CMRS spectrum holdings, for example, in apparent efforts to create national footprints or as the by-product of larger mergers within the telecommunications industry. We also agree with numerous commenters who assert that regulatory certainty is critical to providing the industry with incentives to make investments, including in new technologies such as 3G service. Moreover, we believe that continuing to provide bright-line guidance as to permissible ownership interests will assist CMRS service providers to structure their transactions and plan their investments efficiently, based on their knowledge of the relevant regulatory requirements. This, in turn, will facilitate obtaining financing for such transactions and investments.

25. Our bright-line rules also promote regulatory efficiency, both by speeding the processing of transfers of control and assignment of licenses and by conserving the resources of the Commission and of interested parties. Abandoning our spectrum cap and cross-interest rules inevitably would lengthen our review process. Given the rapid pace of developments in the telecommunications industry, we believe that any advantages that might accrue to market participants from individualized review of spectrum concentration are outweighed by the advantages to them of a shorter review period for their transactions. We note in that regard that any party that believes that an individualized analysis is appropriate in its case may request a waiver of our spectrum cap and cross-interest rules.

b. *Benefits of Preventing Spectrum Re-Concentration When 47 U.S.C. 310(d) Review is Not Available.* 26. We further conclude that the spectrum cap serves important public interest goals that are not covered by 47 U.S.C. 310(d) . The Commission does not have the opportunity to review under 47 U.S.C. 310(d) certain kinds of transactions that may result in re-concentration of spectrum. For example, our review authority under 47 U.S.C. 310(d) would

not extend to a transaction in which less-than-controlling interest in a licensee was transferred, even if the holder of one cellular license in a particular service area obtained a substantial interest in the other cellular block in that market. Such a transaction nonetheless could give rise to competitive concerns. Because certain types of transactions that may re-concentrate spectrum and reduce incentives to compete would not be reviewable under 47 U.S.C. 310(d), we disagree with commenters who suggest that 47 U.S.C. 310(d) is, by itself, an adequate substitute for our spectrum cap and cross-interest.

c. *Benefits for Ongoing Spectrum Management.* 27. We also conclude that bright-line rules are useful for the Commission's ongoing spectrum management purposes. For example, bright-line rules greatly expedite the assignment of spectrum using auctions. They are considerably less costly from a public interest perspective than attempting to decide on a case-by-case basis whether a particular bidder's acquisition of a certain amount of spectrum in a service area would result in undue spectrum concentration. Making that decision with respect to each bidder for a particular service area before the start of an auction would significantly and unnecessarily delay auctions. Even making the decision only with respect to auction winners could delay substantially the assignment of licenses and, if undue concentration were found, presumably would require an entire re-auction.

d. *Benefits Not Afforded By Antitrust Review.* 28. The availability on a case-by-case basis of antitrust review, which several commenters raise, does not change our conclusions as to the benefits of our spectrum cap and cross-interest rules. We note that we typically have conducted a competitive analysis as part of our public interest analysis under 47 U.S.C. 310(d), notwithstanding any independent antitrust review. The courts have acknowledged our authority to engage in such an analysis. We do not disagree with commenters that the availability of case-by-case antitrust review constitutes a valuable tool in furthering our competitive goals. We believe, however, that it is important for us to retain our ability to employ more than one regulatory tool, where necessary in the public interest, to protect and promote competition in those areas within our particular expertise, including spectrum mangement.

29. Moreover, for reasons related to resource constraints or procedural priorities, other agencies with antitrust authority may choose not to give detailed review to a particular merger that, from this Commission's perspective, may adversely affect competition in CMRS markets, or may otherwise be contrary to the public interest. Our spectrum cap and cross-interest rules were designed specifically for use in these markets. The spectrum cap rule, in particular, was expressly conceived to achieve long-term objectives that stressed the beneficial role of new entrants. By contrast, antitrust laws were written primarily to address concerns involving mergers that threaten to curtail actual competition.

e. *Benefits Not Afforded by Regulation of Market Behavior.* 30. Finally, we note that several commenters identified alternative regulatory tools that the Commission has at its disposal, in addition to its public interest authority under 47 U.S.C. 310(d). These include: (a) The Commission's build-out requirements; (b) resale obligations; (c) 47 U.S.C. 201 and 202; and (d) the Commission's complaint and enforcement procedures under 47 U.S.C. 208. We agree with these commenters to the extent that we recognize the importance of retaining our flexibility to employ a variety of regulatory tools where particular circumstances may make alternative approaches useful. We are not persuaded, however, that the alternatives suggested by commenters, individually or collectively, constitute an adequate substitute for our spectrum cap and cross-interest rules as efficient means for promoting and protecting competition in the CMRS sector. Indeed, the greater competition that the spectrum cap promotes makes reliance on those other, arguably more intrusive, regulatory tools, which focus principally on controlling licensees' market behavior, less necessary and less frequent. As a general matter, we believe the better approach is to have rules that promote competition and let competition regulate market behavior, rather than rely in the first instance on this Commission to directly regulate such behavior even if we have the legal authority to do so.

5. Public Interest Costs

31. Some parties argue that there are potential public interest costs associated with the use of the spectrum cap and cellular cross-ownership rules and that such costs warrant the elimination of those rules. We conclude, however, that we can address adequately the concerns raised by these parties by resetting the parameters of the cross-interest and the spectrum cap rules in certain markets, through future spectrum allocations, and by other means.

32. *New and Innovative Services.* Some parties claim that the current cap impairs the ability of wireless carriers to use existing spectrum to develop 3G and other advanced services, such as high-speed internet access. While these possibilities are a concern to us, we do not believe these claims provide a basis for lifting the spectrum cap at the present time. Initially, we note that the assertions in the record along these lines are very general and do not provide any concrete evidence regarding the amount of spectrum that will be needed for 3G technologies or exactly when carriers will need access to that spectrum. Our analysis shows that there are very few markets in which carriers have spectrum holdings that are approaching the cap, which suggests the cap is in most cases not a binding constraint, at least not at the present time. Moreover, as parties explain, there are numerous alternatives to CMRS spectrum that can be used to provide certain types of new services. We also note that no party has submitted an application for waiver to enable it to use additional spectrum to implement a business plan for the development of 3G services. (To the extent that a licensee can demonstrate that compliance with the spectrum cap limits its ability to implement 3G or other advanced services in a particular geographic area in an timely and efficient manner, we would consider grant of a waiver of the spectrum cap for that carrier in that geographic area.)

33. In addition, in our view any disincentives toward the development of new services that arguably may be caused by the current spectrum cap must be weighed against the disincentives toward the development of new services that would exist in a regulatory world without the current spectrum cap. Also, we believe that in many ways the spectrum cap rule has in fact encouraged innovations.

34. Finally, we expect to make available in the near future additional spectrum for the provision of 3G and other advanced wireless services. We will be initiating proceedings to allocate spectrum for those services. We believe it is more appropriate to address spectrum requirements for 3G and other advanced services in the context of a spectrum allocation proceeding than in this proceeding. In the allocation proceeding we will consider whether any newly allocated spectrum should be included in the cap. If we decide to include the newly allocated spectrum under the cap, we will determine in that proceeding how the cap should be adjusted to reflect that additional spectrum.

35. *Competition with Wireline Services.* We find that the record does not indicate the need to raise the spectrum cap to realize the potential of wireless service as a source of competition to wireline service. Although some parties argue that the spectrum cap deters investment in technologies that may compete with wireline offerings, we find that at least theorectically, it is equally plausible that the spectrum cap encourages that development of wireless services that can compete with wireline services. By guarding against the concentration of ownership in a market, the spectrum cap rule helps to ensure that a significant number of wireless licensees will compete in that market. We believe that the likelihood of at least one licensee focusing on wireless local loop service increases with the number of wireless licensees.

36. *Additional Efficiencies.* We find that there is no showing in the record that raising the cap would allow the realization of significant additional efficiencies. First, we note that the record indicates that few carriers have accumulated as much as 45 MHz of spectrum in any one market and that, in general, carriers with 45 MHz are not currently using their entire spectrum allocation. Second, we find that raising the spectrum cap would not necessarily result in significant improvement in allocation of resources because digitalization and other capacity-enhancing innovations have permitted more efficient allocation by carriers of existing spectrum under the cap.

B. Modifications to the Cellular Cross-Interest and Spectrum Cap Rules

1. Modifications to Cellular Cross-Interest Rule

We conclude that the cellular cross-interest rule is still necessary at this time, given the strong market position held by the two cellular carriers in virtually all markets. The two cellular carriers still have the vast majority of subscribers in all markets and are still the only providers of mobile telephone service in many markets. We recognize, however, that the cellular carriers' relative market position has diminished and continues to do so as PCS and digital SMR service providers initiate service in more areas of the country and attract more subscribers. We therefore will reassess the need for a separate cellular cross-interest rule as part of our year 2000 biennial review, by which time we expect that the market positions of the two cellular carriers and PCS and digital SMR service providers will have narrowed further.

38. We also find that it is necessary to maintain a separate cellular cross-interest rule, and not rely solely upon the spectrum cap. Reliance on the cap without the cellular cross-interest rule would allow a party to have an attributable interest in one of the cellular licensees, including control, and up to 20 percent equity ownership interest in the other cellular licensee in the same market. We find that such a high ownership interest by one cellular licensee in the other cellular licensee would pose a substantial threat to competition. It is also not appropriate for us to rely solely on the spectrum cap because we have today modified the spectrum cap to allow a licensee to have an attributable interest in up to 55 MHz in rural areas, defined as RSAs. Without a separate cross-interest rule, this new provision of the spectrum cap would allow a licensee to control both cellular licenses in an RSA.

39. Although CMRS markets are not yet sufficiently competitive to eliminate the cross-interest rule, we believe that given increased competition it is appropriate to relax the attribution benchmarks used in the rule. We amend the rule to allow a party with a controlling or otherwise attributable interest in one of the cellular licensees to have a non-controlling or otherwise non-attributable direct or indirect ownership of up to five percent in the other cellular licensee in the CGSA. We do not believe that such a cross-ownership limit would generally pose a significant threat to competition. We continue to insist that a party with a controlling interest in one cellular licensee in a CGSA may not have a controlling interest, no matter how small, in the other licensee in that market. Similarly, we amend the rule to allow a party to have a non-controlling or otherwise non-attributable direct or indirect ownership interest of up to 20 percent in both licensees in the same CGSA. We believe that given the trend towards more competitive markets, we can relax this attribution level and use the general attribution benchmark set out in the spectrum cap. We also amend the attribution rules relating to the cellular cross-interest rule to bring them in line with the spectrum cap attribution rules in certain other respects.

2. Modifications to Spectrum Cap Rule

a. *Overview.* 40. While we conclude that the spectrum cap should be retained, upon review of the record and re-evaluation of the various components of 47 CFR 20.6, we further conclude that some modifications of the spectrum cap are warranted. As an initial matter, we find that the cap should not generally be raised above 45 MHz. We conclude, however, that an exception should be made in rural areas, defined as RSAs, where a 55 MHz cap will provide additional benefits to the carriers and consumers without substantial risk of anticompetitive conduct. We also amend the attribution provisions of the rule to establish a separate benchmark of 40 percent for equity interests held by passive institutional investors. Finally, we adopt other changes to the rule to clarify which SMR spectrum comes under the cap and to clarify the divestiture provisions of the rule.

b. *Spectrum Aggregation Limit.* 41. We conclude that the spectrum aggregation limit should remain at 45 MHz in most areas. This limitation strikes an appropriate balance between the benefits of spectrum aggregation, and the risk of undue economic concentration in the CMRS markets. In 1996, the Commission set out the economic arguments why a 45-MHz aggregation limit strikes an appropriate balance between the concern about undue market concentration and the benefits of spectrum aggregation. No commenter has persuaded us that this economic analysis is not still valid. We further conclude that in major markets any alleged detriments of a 45 MHz spectrum cap cited by some commenters do not outweigh the benefits of a 45 MHz cap. We are not persuaded that the cap has constrained the ability of carriers to provide services.

42. Regarding the deployment of new, third-generation (3G) technologies, we will be initiating a proceeding in the near future to consider the allocation of spectrum for such services. However, some carriers assert that they have an immediate need to access additional existing CMRS spectrum to offer new services. Therefore, to the extent that a carrier can credibly demonstrate that in a particular geographic area the spectrum cap is currently having a significant adverse affect on its ability to provide 3G or other advanced services, we will consider granting a waiver of the cap for that geographic area. We urge carriers requesting waivers to clearly identify what additional services they would provide if the spectrum cap were waived, and why such services can not be provided without exceeding the cap. In evaluating a waiver request the Commission will also take into account any potential adverse affects of granting the waiver, such as diminution of competition, as well as the potential benefits from the provision of advanced mobile services.

43. We are also concerned that raising the cap to a higher level could lead to unacceptable concentration of these markets. Adoption of a 90 MHz cap could lead to a market with only two competitors, both with 90 MHz. That would, in essence, re-institute the cellular duopoly that the Commission sought to eliminate by establishing PCS. The introduction of new providers and the end of the cellular duopoly has led to substantial consumer benefits through reductions in the price of service and in new and enhanced services. We also reject suggestions to raise the cap to 70 MHz, which would allow the re-concentration of the market to three carriers. While a third competitor in a market provides benefits relative to a duopoly, such a market would still be highly concentrated, and would be less competitive than many markets are today. Even a 50 MHz cap or 55 MHz cap, while maintaining at least four competitors, could lead to excessive concentration in most markets.

44. We find, however, that the economics of serving rural areas are different, and adopt a 55 MHz aggregation limit for those areas. For purposes of the spectrum cap rule, we define rural areas as Rural Service Areas (RSAs). *See* 47 CFR 22.909(b). A 55 MHz aggregation limit in rural areas will permit carriers serving these areas to achieve economies of scope and will allow greater partnering between PCS and cellular in those areas, thereby helping to make competition in rural areas more vigorous. Such partnering may enable carriers to reduce roaming charges that rural subscribers now incur when traveling to urban areas, and when urban residents travel to rural areas. Partnering may also allow further deployment of PCS and other broadband services to rural areas. In addition, the economics of serving high-cost and low-density areas makes it is unreasonable to expect a large number of independent carriers to be viable. As a result, the opportunity cost of rural spectrum rights is likely near zero, and the risks of anticompetitive conduct by foreclosing entry through the monopolization of spectrum are low.

45. We decline to adopt a market-by-market approach. Although a market-by-market approach may have initial appeal there are potential difficulties in implementation, including determining the appropriate geographic area to use since each service uses different market areas.

c. *Attribution.* 46. In reviewing the attribution benchmarks used with the spectrum cap, we make several changes to clarify the rules and to increase the availability of capital to CMRS carriers. We note that the change in the aggregation limit to 55 MHz for rural areas adopted today will increase the availability of capital to CMRS carriers serving rural areas independent of the changes we make to the attribution rules.

47. *Control and Influence.* We decline to adopt a control standard because such a test does not take into account the variety of ways that an investor can exert influence or control over a licensee. An individual or firm does not need actual operational control over (or to be in the management) of a licensee in order to exert influence over that licensee. Further, our concerns about anticompetitive behavior are not limited to what influence the party may exert on the licensee, but also how another licensee may act in the market if it has a significant interest in one of the other providers in that market. A carrier may price its services differently if it has a substantial, yet non-controlling interest in another carrier in the same market. Under such circumstances, it may believe that it can recover some of the revenues it would otherwise lose by its actions through its partial ownership in the other carrier. That type of activity becomes even more fruitful to a carrier as its stake in the other carrier increases. Such actions would also restrict the competition between the two carriers and the resultant benefits to consumers from robust competition.

48. Another difficulty with use of a control test is the burden it would place on the Commission and industry. A control test would be highly inefficient and would not provide regulatory certainty. Under a control test, the Commission would have to engage in frequent case-by-case determinations of control that would be time-consuming, fact-specific, and subjective. We find that a bright-line attribution test avoids these administrative burdens.

49. Similarly, we decline to adopt an exception for insulated partners. Although the fact that a partner is insulated may have an effect on the ability of that partner to directly influence the licensee, it does not address our concerns regarding unilateral action by the limited partner.

50. We also will not adopt a single majority shareholder exception, but will maintain our test for waiving the attribution rules in situations where there is a single majority shareholder. The fact that there may be a single majority shareholder does not change the ability or motive for a party with a significant non-controlling interest to engage in anticompetitive behavior. We do recognize, however, that there may be instances in which a non-controlling interest in a licensee may not provide any incentive or ability for anticompetitive conduct. In 1996, the Commission adopted a four-pronged test to determine when the existence of a single majority shareholder mitigates the competitive impact of common ownership and the ability of the non-controlling interest holder to influence the licensee. 47 CFR 20.6 note 3. Under that test, if the non-controlling interest holder can show that there is an unaffiliated single majority shareholder, that the non-controlling interest holder has no ability to influence the licensee, and that it is not likely to act in an anticompetitive manner, the Commission may waive the attribution rules.

51. We also decline to adopt suggestions that we change the spectrum cap attribution rules to more closely conform to the broadcast attribution rules. Although the spectrum cap attribution rules find their roots in the broadcast attribution rules, they differ, in some respects, due to the different policy concerns that led to their adoption. The primary basis for the spectrum cap attribution rules is the Commission's concern with potential anticompetitive conduct by CMRS carriers. In broadcasting and cable, the Commission also has concerns regarding programming diversity. As a result, certain cross-ownership interests that may be acceptable in broadcasting are inappropriate for CMRS markets. For example, in the broadcast context, the Commission may be less concerned with significant non-controlling ownership when there is a single majority shareholder in charge of programming decisions. In a CMRS setting, the same situation with a non-controlling but significant owner may still be able to leverage its ownership to act anticompetitively in the market.

52. Additionally, we decline to accept suggestions that we modify the attribution rules with respect to directors. Directors, in general, may possess the ability and incentive to use their positions of authority and influence to coordinate behavior of the licensees on whose boards they sit, and can be a conduit to pass non-public information between the licensees on whose boards they sit. The record in this proceeding specifically addressing director attribution is thin and certainly is not sufficient to justify any generally-applicable relaxation of our attribution rules in that regard. We would consider granting a waiver, however, in a particular case if the specific circumstances of a directorship allay the concerns that we have identified.

53. Finally, we address ownership interests linked through partnerships. Any partnership can provide the means for one licensee to influence the actions of its partner in another market where both have interests. In particular, either partner could seize on the goals of their partner in one market to influence the actions of its partner in the other market to anticompetitive effect. Of course, not all partnerships will provide an opportunity for exercising such influence. Consequently, we believe that it is most appropriate to evaluate these ownership relationships on a case-by-case basis.

54. *Waiver Test.* The spectrum cap rule also includes a four-pronged test for waiving attribution for investors with non-controlling, minority interests where the licensee is controlled by a single majority shareholder or controlling general partner. *See* 47 CFR 20.6 note 3. In considering whether a petitioner has met the second prong of the test, we will examine actual competitive conditions in the relevant markets at issue to determine whether an interest holder is likely to affect the market in an anticompetitive manner. Regarding the third prong of the test, in a situation involving a limited partner, we will look to the criteria set forth in the Attribution Reconsideration Order, 50 FR 27438 (July 3, 1985), to determine whether the interest holder is involved in the licensee's operation and has the ability to influence the licensee on a regular basis.

55. *Passive Institutional Investors.* We find that allowing passive institutional investors to have a larger ownership interest in licensees should facilitate access to capital for licensees, and therefore we adopt a separate attribution benchmark for passive institutional investors. In connection with the broadcast and cable attribution rules, the Commission has found that passive institutional investors, such as banks or insurance companies, can have a greater interest in a licensee without incurring substantial risk that investors who should be counted for purpose of applying the ownership rules will avoid attribution. We establish the benchmark for passive institutional investors at 40 percent of the outstanding voting stock of a corporation.

56. *Trusts.* In reviewing the attribution rules used with the spectrum cap, we find it appropriate to adjust our rule regarding the use of trusts. In re-evaluating our attribution rules, we find that the beneficiary maintains an economic interest in the licensee, as well as potentially other interests in the same market. These overlapping interests could provide it with incentives to undertake actions that may impinge on competition in the relevant market, since its actions can affect the benefits it receives from the trust. Consequently, we will amend our attribution rules so that stock interests held in trust will be attributable to both the trustee and the beneficiary. We will grandfather any trust agreements that meet the requirements of the old rule that were in effect on September 14, 1999. For any trust agreements entered into beginning September 15, 1999, stock interests held in trust will be attributed to the trustee, grantor, and the beneficiary of the trust. Those interests will still be subject to the general attribution benchmark, so that if the stock interests in the trust are less than 20 percent of the stock of the company, they will not be attributable. We will still allow the use of trusts for the purpose of divesting an otherwise impermissible interest.

d. *Significant Overlap.* 57. We will not alter the 10 percent overlap threshold for the CMRS spectrum cap. The record does not show that a greater attribution threshold would not raise competitive concerns given our retention of an aggregation limit. We recognize, however, that there may be circumstances in which an overlap of 10 percent or greater would not raise competitive concerns, and may even facilitate the provision of new, enhanced or expanded services to consumers. To the extent that a party can show that in a particular context an overlap of 10 percent or greater would not adversely affect competition in the market at issue, we will consider a request for a limited waiver of the overlap threshold.

e. *SMR Spectrum Aggregation Limits.* 58. We find that the wording of 47 CFR 20.6(b) does not accurately reflect the Commission's intent in the CMRS Third Report and Order, and we will revise the language to clarify that the cap includes 800– and 900–MHz SMR spectrum combined. We are also revising 47 CFR 20.6(b) of our rules to provide that any discrete 800– or 900–MHz channel shall be counted only once per licensee within the relevant geographic area, even if the licensee in question uses the same channel at more than one location.

f. *Divestiture.* 59. We are adopting several changes to the rule to clarify the divestiture provision. First, we clarify that a licensee must divest sufficient attributable interests to maintain compliance with the spectrum cap prior to consummation of the transaction or final grant of the assignment that would give them an attributable interest in excess of the cap, unless they qualify for the additional ninety-day divestiture period. Second, we also clarify that a licensee need meet only one of the three conditions set out in the rule to qualify for the additional ninety-day divestiture period. Third, in conjunction with our changes to the attribution rules regarding the use of trusts, we clarify that a licensee may use a trust for divestiture purposes if the trust is of limited duration (six months or less) and the terms of the trust are approved by the Commission prior to the transfer of the assets to the trust. The applicant must not have any interest in or control of the trustee. The trust agreement must clearly state that there will be no communications with the trustee regarding the management or operation of the subject facilities, and must give the trustee authority to dispose of the license as the trustee sees fit. Consistent with 47 CFR 0.5(c), we delegate authority to the Wireless Telecommunications Bureau to review proposed trusts to ensure that they comply with our rules.

C. CTIA Forbearance

60. On September 30, 1998, the Cellular Telecommunications Industry Association filed a Petition for Forbearance. CTIA requests that the Commission use its authority under 47 U.S.C. 160 to forbear from applying 47 CFR 20.6. CTIA urges the Commission to rely upon a case-by-case determination of permissible levels of horizontal ownership as part of the 47 U.S.C. 310(d) license transfer review.

61. Upon review of the record in this proceeding, we find that enforcement of the spectrum cap continues to be in the public interest. Thus, we will not forbear from enforcement of the spectrum cap rule at this time. While CMRS markets are becoming more competitive, we do not find, for the reasons discussed above, that we can rely on market forces alone to constrain anticompetitive practices by CMRS carriers. The spectrum cap still plays an important role in protecting and promoting competition within CMRS markets, and ensuring that rates and practices of CMRS carriers are reasonable. We also do not find that reliance on case-by-case review under antitrust law and our authority under 47 U.S.C. 310(d) are an adequate substitute for the spectrum cap. Particularly under circumstances where a party is transferring unbuilt spectrum or a system that is not operational or lacks customers, antitrust review can be especially burdensome. Similarly, reliance on review under 47 U.S.C. 310(d) would not bring to the Commission's attention many cross-

ownership situations comprising less than control yet raising competitive concerns. Consequently, we find that the spectrum cap rule is necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.

62. We find the spectrum cap is necessary for the protection of consumers. As we discuss above in addressing the first prong of 47 U.S.C. 160, we find the spectrum cap is necessary to ensure that carriers do not act in a manner that could lead to the imposition of unreasonable rates or practices. Although CMRS markets are growing increasingly more competitive as more carriers enter the market, we do not find we can rely solely on market forces to protect consumers. Thus, we find the spectrum cap serves a necessary purpose in protecting consumers by promoting and protecting competition.

63. We find the spectrum cap serves the public interest. As the D.C. Circuit Court recently recognized, ''[a] spectrum cap, unlike many other regulations, might actually require a bright-line rule to be effective.'' *BellSouth* v. *FCC,* 162 F.3d at 1225. A bright-line test provides both the Commission and industry with regulatory certainty in dealing with possible cross-ownership situations. As such, it reduces burdens placed on both the Commission and industry. It gives industry advance notice of which types of cross-ownership situations the Commission finds would be anticompetitive. Use of a case-by-case review would eventually lead to an understanding of which types of cross-ownership interests the Commission believes are anticompetitive, but would require the Commission and industry to expend significant resources in reviewing individual cross-ownership proposals before sufficient precedent would be set to establish the line. Under the spectrum cap rule, a party that believes its proposed cross-ownership interest would not be anticompetitive and would serve the public interest is still able to make its case to the Commission through a request for waiver of the cap. On balance, we find that our use of bright-line tools better serve the public interest than a case-by-case approach.

III. Other Issues

A. Third FNPRM in GN Docket 93–252

64. *Background.* In 1995, the Commission sought comment on whether the spectrum cap should be extended to all cellular, SMR, and broadband PCS providers regardless of whether they are classified as Private Mobile Radio Services (PMRS) or CMRS providers. Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Third Further Notice of Proposed Rulemaking,* 60 FR 26861 (May 19, 1995). We find that such a rule change is unnecessary at this time. Under the definitions of CMRS and PMRS contained in the statute and our regulations, mobile service that is the functional equivalent of CMRS will be treated as CMRS. To the extent that a licensee provides service that is the functional equivalent of CMRS in the frequency bands included within the spectrum cap it will be treated as CMRS and thus subject to the cap. Therefore, we will not include PMRS under the spectrum cap.

B. Separate Cap for SMR

65. We decline to adopt a separate spectrum cap for SMR services using 800 MHz frequencies as suggested by Southern Communications Services. We find that the appropriate service(s) for a spectrum cap are all broadband CMRS, as CMRS carriers generally compete or have the potential to compete against each other. We can decide on a case-by-case basis under authority pursuant to 47 U.S.C. 310(d) whether a different market definition is appropriate in the context of a specific ownership situation.

C. Pending Petitions for Reconsideration

66. In the NPRM we stated our intent to consolidate in this proceeding certain spectrum-cap-related issues pending in other proceedings, and accordingly incorporated the records of those proceedings into this one. We therefore also consider here certain petitions for reconsideration which raise issues regarding the spectrum cap: (1) A petition for reconsideration of the *CMRS Third Report and Order* filed by SMR Won; (2) a petition for reconsideration of the *CMRS Fourth Report and Order* filed by McCaw Cellular; and, (3) petitions for reconsideration of the *CMRS Spectrum Cap Report and Order* filed by Omnipoint and Radiofone. In this *Report and Order* we have conducted a comprehensive review of the spectrum cap. For the reasons discussed herein, we find that the use of a spectrum aggregation limit for broadband CMRS services serves the public interest and advances the goals of the Commission including the promotion of competition, the protection of existing competition, and provision of new and enhanced services to consumers throughout the country. Given our thorough re-examination of the cap and our findings regarding its public interest benefit, we find the petitions for reconsideration to be moot and consequently dismiss them.

IV. Procedural Issues

A. Regulatory Flexibility Analysis

67. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 98–205. The Commission sought written comments on the proposals in the *NPRM,* including the IRFA. The Commission's Final Regulatory Flexibility Analysis for the Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.

1. Need for and Purpose of the Action

68. The Report and Order in this docket concludes CMRS spectrum cap and cellular cross-interest rules continue to be appropriate and effective tools to promote and protect competition in CMRS markets. The recent and rapid growth of competition in these markets—resulting from Commission decisions to allocate spectrum for PCS and assign licenses subject to the spectrum cap (thereby assuring multiple providers in most markets)—has been a great success. The Commission finds that undue consolidation of CMRS ownership would jeopardize the continued realization of these benefits. The Commission concludes that the public interest is better served by the continued use of a bright-line test of spectrum ownership rather than by exclusive reliance on case-by-case review of proposed ownership arrangements. The Commission finds that it is not sufficient to rely solely on case-by-case review of CMRS transactions, whether through the Commission's transfer of control process under 47 U.S.C. 310(d) or antitrust review, to protect and promote competition in CMRS markets. Therefore, the Commission concludes that the spectrum cap and cellular cross-interest rules continue to play an important role in guiding the development of competition and services in CMRS markets.

69. Although the Commission concludes in the Report and Order that the spectrum cap and cellular cross-interest rules should be retained, it finds that the rules can be modified to allow certain additional cross-ownership interests without significantly

increasing the risk of undue market concentration or anticompetitive behavior by licensees. Consequently, in the Report and Order the Commission makes the following modifications to the spectrum cap and cellular cross-interest rules: (1) Adopts a 55 MHz spectrum aggregation limit for licensees serving rural areas, defined as Rural Service Areas (RSAs); (2) allows up to 40 percent investment for passive institutional investors (as opposed to 20 percent for other investors); and (3) amends the cellular cross-interest rule to allow a cellular investor to have a limited non-controlling interest in the other cellular license in the same market. Finally, the Commission states that it will reevaluate the continuing need for these rules as part of our year 2000 biennial review.

70. Finally, for the reasons outlined above, the Commission finds that enforcement of the spectrum cap continues to be in the public interest, and therefore denies a request to forbear from enforcing the spectrum cap filed by the Cellular Telecommunications Industry Association pursuant to 47 U.S.C. 160.

2. Issues Raised in Response to the IRFA

71. The Commission sought comment generally on the IRFA. No comments were submitted specifically in response to the IRFA.

3. Description and Estimates of the Number of Small Entities to Which the Rules Adopted in This Report and Order Will Apply

72. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. 5 U.S.C. 603(b)(3), 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(6). Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' 5 U.S.C. 601(5). As of 1992, there were 85,006 such jurisdictions in the United States.

73. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. 5 U.S.C. 601(3). Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

74. The rule changes adopted in this Report and Order will affect all small businesses that currently are or may become licensees of the broadband PCS, cellular and/or specialized mobile radio (SMR) services. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

75. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. 13 CFR 121.201. According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Trends in Telephone Service* data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. *Trends in Telephone Service*, Table 19.3 (Feb. 19, 1999). We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 732 small cellular service carriers that may be affected by the policies adopted in this Report and Order.

76. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

77. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined ''small entity'' in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a ''small entity'' in the context of 900 MHz SMR has been approved by the SBA. Approval concerning 800 MHz SMR is being sought. The rules adopted in this Reconsideration may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the policies adopted in this Report and Order.

78. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule adopted in this *Report and Order* includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of

525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions adopted in this Report and Order.

4. Reporting, Recordkeeping, and Other Compliance Requirements

79. The rules adopted in this Report and Order pose no additional reporting, record keeping or other compliance measures.

5. Steps Taken To Minimize Burdens on Small Entities and Significant Alternatives Considered

80. In the *Report and Order,* the Commission concludes that retention of the CMRS spectrum cap and cellular cross-interest rules serves the public interest. The Commission concludes that the benefits of these bright-line tests in addressing concerns about increased spectrum aggregation continue to make these approaches preferable to exclusive reliance on case-by-case review under section 310(d). By setting bright lines for permissible ownership interests, the rules benefit the public, the telecommunications industry and the Commission by providing regulatory certainty and facilitating more rapid processing of transactions.

81. The Commission finds that the CMRS spectrum cap and cellular cross-interest rule promote regulatory efficiency, both by speeding the processing of transfers of control and assignment of licenses and by conserving the resources of the Commission and of interested parties. Moving from the spectrum cap and cross-interest rules to case-by-case review inevitably would lengthen the review process. The Commission recognized the concerns raised by several commenters about the burdens on the resources of the Commission and of interested parties that are inherent in case-by-case determinations regarding permissible ownership structures. For example, case-by-case analysis is especially expensive and time-consuming for small businesses, which often do not have the requisite resources.

6. Report to Congress

82. The Commission shall send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of this Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

83. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and does not contain any new or modified information collections subject to Office of Management and Budget review.

V. Ordering Clauses

84. Accordingly, *it is ordered* that, pursuant to sections 4(i), 11 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161 and 332, this Report and Order is hereby *adopted,* and sections 20.6 and 22.942 of the Commission's Rules, 47 CFR 20.6, 22.942, *are amended* as set forth in Appendix B, effective November 8, 1999.

85. *It is further ordered* that, pursuant to sections 1, 2, 4, and 10 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154 and 160, the Petition for Forbearance filed by the Cellular Telecommunications Industry Association *is denied.*

86. *It is further ordered* that the Petition for Partial Reconsideration of the Third Report and Order in GN Docket No. 93–252 filed by SMR Won *is dismissed as moot* to the extent discussed herein.

87. *It is further ordered* that the Petition for Reconsideration of the Fourth Report and Order in GN Docket No. 93–252 filed by McCaw Comunications, Inc. is dismissed as moot.

88. *It is further ordered* that the Petition for Reconsideration of the Report and Order in WT Docket No. 96–59 filed by Omnipoint Corporation *is dismissed as moot.*

89. *It is further ordered* that the Petition for Reconsideration of the Report and Order in WT Docket No. 96–59 filed by Radiofone, Inc. *is dismissed as moot.*

90. *It is further ordered* pursuant to section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), and §§ 0.5(c), 0.131 and 0.331 of the Commission's rules, 47 CFR 0.5(c), 0.131, 0.331, the Chief of the Wireless Telecommunications Bureau *is granted delegated authority* to review and approve proposals to hold ownership interests in broadband Personal Communications Service, cellular, and Special Mobile Radio services licenses regulated as Commercial Mobile Radio Services in a trust to ensure that the trust complies with the Commission's rules.

91. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of *this Report and Order,* including the final regulatory flexibility analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

List of Subjects

47 CFR Part 20

Communications common carrier.

47 CFR Part 22

Communications common carrier.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 20 and 22 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for Part 20 continues to read as follows:

47 U.S.C. 154, 160, 251–54, 303, and 332 unless otherwise noted.

2. Section 20.6 is revised to read as follows:

§ 20.6 CMRS spectrum aggregation limit.

(a) *Spectrum limitation.* No licensee in the broadband PCS, cellular, or SMR services (including all parties under common control) regulated as CMRS (see 47 CFR 20.9) shall have an attributable interest in a total of more than 45 MHz of licensed broadband PCS, cellular, and SMR spectrum regulated as CMRS with significant overlap in any geographic area, except that in Rural Service Areas (RSAs), as defined in 47 CFR 22.909, no licensee shall have an attributable interest in a total of more than 55 MHz of licensed broadband PCS, cellular, and SMR

spectrum regulated as CMRS with significant overlap in any RSA.

(b) *SMR spectrum*. To calculate the amount of attributable SMR spectrum for purposes of paragraph (a) of this section, an entity must count all 800 MHz and 900 MHz channels located at any SMR base station inside the geographic area (MTA or BTA) where there is significant overlap. All 800 MHz channels located on at least one of those identified base stations count as 50 kHz (25 kHz paired), and all 900 MHz channels located on at least one of those identified base stations count as 25 kHz (12.5 kHz paired); provided that any discrete 800 or 900 MHz channel shall be counted only once per licensee within the geographic area, even if the licensee in question utilizes the same channel at more than one location within the relevant geographic area. No more than 10 MHz of SMR spectrum in the 800 and 900 MHz SMR services will be attributed to an entity when determining compliance with the cap.

(c) *Significant overlap*. (1) For purposes of paragraph (a) of this section, significant overlap of a PCS licensed service area and CGSA(s) (as defined in § 22.911 of this chapter) or SMR service area(s) occurs when at least 10 percent of the population of the PCS licensed service area for the counties contained therein, as determined by the latest available decennial census figures as complied by the Bureau of the Census, is within the CGSA(s) and/or SMR service area(s).

(2) The Commission shall presume that an SMR service area covers less than 10 percent of the population of a PCS service area if none of the base stations of the SMR licensee are located within the PCS service area. For an SMR licensee's base stations that are located within a PCS service area, the channels licensed at those sites will be presumed to cover 10 percent of the population of the PCS service area, unless the licensee shows that its protected service contour for all of its base stations covers less than 10 percent of the population of the PCS service area.

(d) *Ownership attribution*. For purposes of paragraph (a) of this section, ownership and other interests in broadband PCS licensees, cellular licensees, or SMR licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee shall be attributed, except that ownership will not be attributed unless the partnership and other ownership interests and any stock interest amount to at least 40 percent of the equity, or outstanding stock, or outstanding voting stock of a broadband PCS, cellular or SMR licensee if the ownership interest is held by a small business or a rural telephone company, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules, or if the ownership interest is held by an entity with a non-controlling equity interest in a broadband PCS licensee or applicant that is a small business.

(3) Investment companies, as defined in 15 U.S.C. 80a–3, insurance companies and banks holding stock through their trust departments in trust accounts will be considered to have an attributable interest only if they hold 40 percent or more of the outstanding voting stock of a corporate broadband PCS, cellular or SMR licensee, or if any of the officers or directors of the broadband PCS, cellular or SMR licensee are representatives of the investment company, insurance company or bank concerned. Holdings by a bank or insurance company will be aggregated if the bank or insurance company has any right to determine how the stock will be voted. Holdings by investment companies will be aggregated if under common management.

(4) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(5) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted, except that this provision does not apply in determining whether an entity is a small business, a rural telephone company, or a business owned by minorities and/or women, as these terms are defined in § 1.2110 of this chapter or other related provisions of the Commission's rules.

(6) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(7) Officers and directors of a broadband PCS licensee or applicant, cellular licensee, or SMR licensee shall be considered to have an attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a broadband PCS licensee or applicant, a cellular licensee, or an SMR licensee shall be considered to have an attributable interest in the broadband PCS licensee or applicant, cellular licensee, or SMR licensee.

(8) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20% of B, and B owns 40% of licensee C, then A's interest in licensee C would be 8%. If A owns 20% of B, and B owns 51% of licensee C, then A's interest in licensee C would be 20% because B's ownership of C exceeds 50%.)

(9) Any person who manages the operations of a broadband PCS, cellular, or SMR licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(10) Any licensee or its affiliate who enters into a joint marketing arrangements with a broadband PCS, cellular, or SMR licensee, or its affiliate shall be considered to have an attributable interest, if such licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(e) *Divestiture*. (1) Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment, except that a licensee that meets the requirements set forth in paragraph (e)(2) of this section

shall have 90 days from final grant to come into compliance with the spectrum aggregation limit.

(2) An applicant with:

(i) Controlling or attributable ownership interests in broadband PCS, cellular, and/or SMR licenses where the geographic license areas cover 20 percent or less of the applicant's service area population;

(ii) Attributable interests in broadband PCS, cellular, and/or SMR licenses solely due to management agreements or joint marketing agreements; or

(iii) Non-controlling attributable interests in broadband PCS, cellular, and/or SMR licenses, regardless of the degree to which the geographic license areas cover the applicant's service area population, shall be eligible to have its application granted subject to a condition that the licensee shall come into compliance with the spectrum limitation set out in paragraph (a) within ninety (90) days after final grant. For purposes of this paragraph, a ''non-controlling attributable interest'' is one in which the holder has less than a fifty (50) percent voting interest and there is an unaffiliated single holder of a fifty (50) percent or greater voting interest.

(3) The applicant for a license that, if granted, would exceed the spectrum aggregation limitation in paragraph (a) of this section shall certify on its application that it and all parties to the application will come into compliance with this limitation. If such an applicant is a successful bidder in an auction, it must submit with its long-form application a signed statement describing its efforts to date and future plans to come into compliance with the spectrum aggregation limitation. A similar statement must also be included with any application for assignment of licenses or transfer of control that, if granted, would exceed the spectrum aggregation limit.

(4)(i) Parties holding controlling interests in broadband PCS, cellular, and/or SMR licensees that conflict with the attribution threshold or geographic overlap limitations set forth in this section will be considered to have come into compliance if they have submitted to the Commission an application for assignment of license or transfer of control of the conflicting licensee (see §§ 24.839 (PCS), 22.39 (cellular), and 90.158 of this chapter (SMR)) by which, if granted, such parties no longer would have an attributable interest in the conflicting license. Divestiture may be to an interim trustee if a buyer has not been secured in the required period of time, as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit. Where parties to broadband PCS, cellular, or SMR applications hold less than controlling (but still attributable) interests in broadband PCS, cellular, or SMR licensee(s), they shall submit a certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section.

(ii) Applicants that meet the requirements of paragraph (e)(2) of this section must tender to the Commission within ninety (90) days of final grant of the initial license, such an assignment or transfer application or, in the case of less than controlling (but still attributable) interests, a written certification that the applicant and all parties to the application have come into compliance with the limitations on spectrum aggregation set forth in this section. If no such transfer or assignment application or certification is tendered to the Commission within ninety (90) days of final grant of the initial license, the Commission may consider the certification and the divestiture statement to be material, bad faith misrepresentations and shall invoke the condition on the initial license or the assignment or transfer, cancelling or rescinding it automatically, shall retain all monies paid to the Commission, and, based on the facts presented, shall take any other action it may deem appropriate.

Note 1 to § 20.6: For purposes of the ownership attribution limit, all ownership interests in operations that serve at least 10 percent of the population of the PCS service area should be included in determining the extent of a PCS applicant's cellular or SMR ownership.

Note 2 to § 20.6: When a party owns an attributable interest in more than one cellular or SMR system that overlaps a PCS service area, the total population in the overlap area will apply on a cumulative basis.

Note 3 to § 20.6: Waivers of § 20.6(d) may be granted upon an affirmative showing:

(1) That the interest holder has less than a 50 percent voting interest in the licensee and there is an unaffiliated single holder of a 50 percent or greater voting interest;

(2) That the interest holder is not likely to affect the local market in an anticompetitive manner;

(3) That the interest holder is not involved in the operations of the licensee and does not have the ability to influence the licensee on a regular basis; and

(4) That grant of a waiver is in the public interest because the benefits to the public of common ownership outweigh any potential anticompetitive harm to the market.

PART 22—PUBLIC MOBILE SERVICES

3. The authority citation for part 22 continues to read as follows:

47 U.S.C. 154, 222, 303, 309, and 332.

4. Section 22.942 is revised to read as follows:

§ 22.942 Limitations on interests in licensees for both channel blocks in an area.

(a) *Controlling interests.* A licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for one channel block in a CGSA may have an direct or indirect ownership interest of 5 percent or less in the licensee, an individual or entity that owns a controlling or otherwise attributable interest in a licensee, or an individual or entity that actually controls a licensee for the other channel block in an overlapping CGSA.

(b) *Non-controlling interests.* A direct or indirect non-attributable interest in both systems is excluded from the general rule prohibiting multiple ownership interests.

(c) *Divestiture.* Divestiture of interests as a result of a transfer of control or assignment of authorization must occur prior to consummating the transfer or assignment.

(d) *Ownership attribution.* For purposes of paragraphs (a) and (b) of this section, ownership and other interests cellular licensees will be attributed to their holders pursuant to the following criteria:

(1) Controlling interest shall be attributable. Controlling interest means majority voting equity ownership, any general partnership interest, or any means of actual working control (including negative control) over the operation of the licensee, in whatever manner exercised.

(2) Partnership and other ownership interests and any stock interest amounting to 20 percent or more of the equity, or outstanding stock, or outstanding voting stock of a cellular licensee shall be attributed.

(3) Non-voting stock shall be attributed as an interest in the issuing entity if in excess of the amounts set forth in paragraph (d)(2) of this section.

(4) Debt and instruments such as warrants, convertible debentures, options, or other interests (except non-voting stock) with rights of conversion to voting interests shall not be attributed unless and until converted.

(5) Limited partnership interests shall be attributed to limited partners and shall be calculated according to both the percentage of equity paid in and the percentage of distribution of profits and losses.

(6) Officers and directors of a cellular licensee shall be considered to have an

attributable interest in the entity with which they are so associated. The officers and directors of an entity that controls a cellular licensee shall be considered to have an attributable interest in the cellular licensee.

(7) Ownership interests that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. (For example, if A owns 20% of B, and B owns 40% of licensee C, then A's interest in licensee C would be 8%. If A owns 20% of B, and B owns 51% of licensee C, then A's interest in licensee C would be 20% because B's ownership of C exceeds 50%.)

(8) Any person who manages the operations of a cellular licensee pursuant to a management agreement shall be considered to have an attributable interest in such licensee if such person, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

(9) Any licensee or its affiliate who enters into a joint marketing arrangements with a cellular, licensee, or its affiliate shall be considered to have an attributable interest, if such licensee, or its affiliate, has authority to make decisions or otherwise engage in practices or activities that determine, or significantly influence,

(i) The nature or types of services offered by such licensee;

(ii) The terms upon which such services are offered; or

(iii) The prices charged for such services.

[FR Doc. 99–25704 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket 94–158; FCC 99–171]

Operator Services Providers and Call Aggregators

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: This document establishes the effective date of the rule published on August 30, 1999 concerning a deadline to update inaccurate information posted on a public phone about the presubscribed provider of long-distance operator services at that location.

DATES: Section 64.703(c) of the Commission's rules published at 64 FR 47118 (August 30, 1999) concerning Operator Services Providers and Call Aggregators shall become effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Adrien R. Auger, Enforcement Division, Common Carrier Bureau (202) 418–0960, or via the Internet at aauger@fcc.gov.

SUPPLEMENTARY INFORMATION: On July 12, 1999, the Commission amended its rules to require that the information that call aggregators must post on or near pay phones be updated as soon as practicable, but no later than 30 days from the time of a change of the presubscribed operator service provider. The new rule was adopted in order to ensure that consumers are timely provided with basic information they need to make informed choices among telecommunications operator services providers. A summary of this order was published in the **Federal Register**. *See* 64 FR 47118, August 30, 1999. Because § 64.703(c) imposes new information collection requirements, it could not become effective until approved by the Office of Management and Budget (OMB). We stated that the Commission would publish a document in the **Federal Register** announcing the effective date for the rule. On September 24, 1999, OMB approved the information collections contained in the rule. (See OMB No. 3060–0653). This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rule.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–25974 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 092899G]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: General category closure.

SUMMARY: NMFS has determined that the 1999 Atlantic bluefin tuna (BFT) coastwide General category quota will be attained by October 3, 1999. Therefore, the coastwide General category fishery will be closed effective 11:30 p.m. on October 3, 1999. This action is being taken to prevent overharvest of the coastwide General category quota of 644 metric tons (mt).

DATES: Effective 11:30 p.m. local time on October 3, 1999, through May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Pat Scida, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories. The General category landings quota, including time-period subquotas and the New York Bight set-aside, are specified annually as required under § 635.27(a)(1). The 1999 General category quota and effort control specifications were issued June 1, 1999 (64 FR 29806, June 3, 1999).

General Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached, or is projected to be

reached. On and after the effective date and time of such closure notification, for the remainder of the fishing year or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notification.

The 1999 BFT quota specifications issued pursuant to § 635.27 set a coastwide General category quota of 644 mt of large medium and giant BFT to be harvested from the regulatory area during the 1999 fishing year. Based on reported landings and effort, NMFS projects that this quota will be reached by October 3, 1999. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels in the General or Charter/Headboat categories must cease at 11:30 p.m. local time October 3, 1999. The intent of this closure is to prevent overharvest of the coastwide quota established for the General category.

The 1999 quota specifications also established a set-aside quota of 10 mt for vessels fishing in the New York Bight area. NMFS will announce the opening date of the General category New York Bight fishery through a separate **Federal Register** document when it is determined that large medium and giant BFT are available in the New York Bight area. Allowing a few days transition between the closure of the coastwide fishery and the opening of the New York Bight fishery reduces concerns regarding enforcement of regulations applicable to that area, i.e., that upon the effective date of the set-aside fishery, fishing for, retaining, or landing large medium or giant BFT is authorized only within the set-aside area.

General category permit holders may tag and release BFT while the General category is closed, subject to the requirements of the tag-and-release program at § 635.26. Vessels permitted in the Charter/Headboat category that are still eligible for the Angling category trophy fish allowance under § 635.23(c)(1)(2) may land one large medium or giant BFT prior to May 31, 2000.

Classification

This action is taken under § 635.28(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: October 1, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26099 Filed 10–1–99; 4:29 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 100199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Vessels Less Than or Equal To 99 Feet LOA Catching Pollock for Processing by the Inshore Component in the Bering Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is modifying a closure for pollock by vessels catching pollock for processing by the inshore component in the critical habitat/catcher vessel operational area (CH/CVOA) of the Bering Sea and Aleutian Islands management area (BSAI) to exempt from this closure vessels less than or equal to 99 feet length over all (LOA). This action is necessary because a sufficient amount of the C season limit of the pollock total allowable catch (TAC) specified for the inshore component within the CH/CVOA remains to accommodate fishing by vessels less than or equal to 99 feet LOA catching pollock for processing by the inshore component.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 1, 1999 until 2400 hrs A.l.t., December 31, 1999, or until NMFS publishes further notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(C)(*1*) and the revised emergency interim rule implementing Steller Sea lion conservation measures (64 FR 39087, July 21, 1999), the 1999 C season limit of pollock TAC specified to the inshore component for harvest within the CH/CVOA is 79,307 metric tons (mt). On September 29, 1999, the Administrator, Alaska Region, NMFS (Regional Administrator), issued a notice, which will publish on October 4, 1999, stating that the C season limit of pollock had been reached and prohibited directed fishing for pollock by all vessels catching pollock for processing by the inshore component within the CH/CVOA.

However, in calculating the directed fishing closure, 5,000 mt of pollock had been reserved to accommodate continued fishing by catcher vessels less than or equal to 99 feet LOA, consistent with § 679.22(a)(11)(iv)(C)(*2*). Although the notice prohibited directed fishing for pollock by all inshore vessels, the intent was to close directed fishing for catcher vessels greater than 99 feet LOA and to exempt from the closure catcher vessels less than or equal to 99 feet LOA.

Consequently, NMFS is modifying the September 29, 1999, directed fishing closure for inshore pollock in the CH/CVOA to exempt from the closure catcher vessels less than or equal to 99 feet LOA catching pollock for processing by the inshore component within the CH/CVOA conservation zone, as defined at § 679.22(a)(11)(iv)(B). The closure remains in full force and effect for inshore catcher vessels greater than 99 feet LOA.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow for the continued fishing for the C season limit of pollock in the CH/CVOA by catcher vessels less than or equal to 99 feet LOA catching pollock for processing by the inshore component. A delay in the effective date is impracticable and contrary to the public interest. Further delay would result in inconsistency with regulation implementing reasonable and prudent management measures to promote the recovery of the endangered Steller sea lion. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 99–26101 Filed 10–1–99; 4:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 194
Thursday, October 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–45–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A1/–A5/–D5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines, that currently requires revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–45–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–11, Amendment 39–311117 (64 FR 17956, April 13, 1999), to require revisions to the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals of International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, IAE has developed additional focused inspection procedures. This proposal would add additional parts that would require enhanced inspection at each piece-part exposure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–11 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 229 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to perform the enhanced inspection for both high pressure (HP) turbine disks. The FAA estimates that approximately 458 HP turbine disks (stage 1 and 2) would be inspected. The average labor rate is $60 per work hour. The total cost of the new inspections per engine would be approximately $120. Using average shop visitation rates, the annual cost impact of the added inspections on U.S. operators is approximately $28,000.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11117 (64 FR 17956, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

International Aero Engines AG: Docket No. 98–ANE–45–AD. Supersedes AD 99–08–11, Amendment 39–11117.

Applicability: International Aero Engines AG (IAE) V2500–A1/–A5/–D5 series turbofan engines, installed on but not limited to Airbus Industrie A319, A320, and A321 series, and McDonnell Douglas MD–90 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Airworthiness Limitations Section (ALS) and Maintenance Scheduling Section (MSS) of the Instructions for Continued Airworthiness (ICA) in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, part number (P/N) E–V2500–1IA and P/N E–V2500–3IA, and for air carrier operations revise the approved continuous airworthiness maintenance program, by

(i) Adding the following to paragraph 1, entitled ''Airworthiness Limitations:'' ''Refer to paragraph 2—Maintenace Scheduling for information that sets forth the operator's maintenance requirements for the V2500 On-Condition engine.''

(ii) Adding the following paragraph 2, entitled ''Maintenance Scheduling:'' ''Whenever a Group A part identified in this paragraph (see 2.1 for definition of Group A) satisfies both of the following conditions:

(A) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the engine manufacturer's engine manual; and

(B) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine; then that part is considered to be at the piece-part level and it is mandatory to perform the inspections for that part as specified in the following:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
Fan Disk	All	Chapter 72–31–12, Subtask 72–31–12–230–054.
Stage 1 HP Turbine Hub	All	Chapter 72–45–11, Task 72–45–11–200–002.
Stage 2 HP Turbine Hub	All	Chapter 72–45–31, Task 72–45–31–200–004.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] of this chapter must maintain records of the mandatory inspections that result from revising the ALS and MSS of the ICA in the Time Limits Manual (Chapter 05–10–00) of the Engine Manuals, P/N E–V2500–1IA and P/N E–V2500–3IA, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2) (vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the Engine Manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager,

Engine and Propeller Directorate,

Aircraft Certification Service.

[FR Doc. 99–26137 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–66–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4000 series turbofan engines, that currently requires revisions to the Time Limits Section of the manufacturer's Engine Manuals (EMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures for other critical life-limited rotating engine parts that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–66–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7128, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–66–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–66–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–15, Amendment 39–311121 (64 FR 17947, April 13, 1999), to require revisions to the Time Limits Section in the Engine Manuals (EMs) for certain Pratt & Whitney (PW) PW4000 series turbofan engines to include required enhanced inspection of selected critical life-limited rotating components in the fan rotor at each piece-part exposure.

New Procedures and Parts

Since the issuance of that AD, additional focused inspection procedures for other critical life-limited rotating engine parts have been developed. The new parts are the:

- High Pressure Compressor (HPC) 5th stage disk
- HPC front drum rotor
- HPC rear drum rotor
- HPC 15th stage disk
- High Pressure Turbine (HPT) 1st stage airseal—on certain models
- HPT 2nd stage airsealùon certain models
- HPT 1st stage (front) hub
- HPT 2nd stage (rear) hub

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–15 to require the additional critical life-limited rotating engine parts to be subject to focused inspection at each piece-part opportunity.

Changes From AD 99–08–15

The FAA has revised the piece-part definition to make it clearer at which assembly level (assembly or detail) inspection of the part is acceptable.

Also, the FAA has added additional part numbers (P/Ns) to the LPC Hub Assembly section of the AD to include the PW4098 models. While the inspections required for these parts were included in the manufacturer's service documentation upon entry into service and therefore do not need to be included in this AD, the FAA has included these P/Ns to make this AD an all-inclusive inspection requirement for all PW4000 series engine models.

Finally, the FAA has corrected an error in the LPC hub assembly, which was discovered in the original AD. The detail P/N for the LPC hub assembly P/N 51B631 was changed from ''50B601'' to ''51B601.''

Economic Analysis

The FAA estimates that 450 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour, the average Shop Visit Rate is .097, and the average usage is 3,250hrs/year/engine. Based on these

figures and assuming that on average 5 components per visit will require an inspection, the total cost impact of the proposed AD on US operators is estimated to be $337,000 per year, or approximately $750 per engine per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11121 (64 FR 17947, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–66–AD. Supersedes AD 99–08–15, Amendment 39–11121.

Applicability: Pratt & Whitney (PW) Model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4168, PW4168A, PW4164, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, and PW4098 turbofan engines, installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747, 767, and 777 series, and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section of the manufacturer's Engine Manual (EM), Part Numbers (P/Ns) 50A605, 50A443, 51A342, 50A822, 51A751, and 51A345, as applicable, for PW Model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, PW4168, PW4168A, PW4164, PW4074, PW4074D, PW4077, PW4077D, PW4084, PW4084D, PW4090, PW4090D, and PW4098 turbofan engines, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable PW4000 series Engine Cleaning, Inspection, and Repair (CIR) Manuals:

Nomenclature (description)	Part No.	CIR manual section	CIR manual inspection	CIR manual
Hub, LPC Assembly	50B221 (50B201 Detail); 50B321 (50B301 Detail); 51B321 (51B301 Detail); 52B021 (52B001 Detail).	72–31–07	Insp/Check-02 ..	51A357
	51B631 (51B601 Detail); 51B821 (51B801 Detail); 52B521 (52B501 Detail); 52B421 (52B401 Detail); 52B321 (52B101 Detail); 51B721 (52B101 Detail).	72–31–07	Insp/check-02 ...	51A750
HPC 5th stage disk	51H005; 51H905; 54H405; 54H705; 54H705–001; 56H605; 56H705.	72–35–06	Insp/Check-02 ..	51A357
	54H705; 55H805; 56H505	72–35–06	Insp/Check-02 ..	51A750
HPC front drum rotor	50H859; 50H859–001; 51H426–01; 52H559–01; 52H926–01; 53H676–01; 53H976–01; 54H626–01; 54H816–01; 55H106–01;.	72–35–07	Insp/Check-02 ..	51A357
	53H406–01; 55H206–01; 56H306–01	72–35–07	Insp/Check-02 ..	51A750
HPC rear drum rotor	50H936; 50H936–002; 53H923–01; 53H923–001	72–35–08	Insp/Check-02 ..	51A357
	53H973–01; 53H973–001; 54H803–01; 54H803–001; 56H013–01.	72–35–10	Insp/Check-02 ..	51A357
	55H722–01; 55H410–01; 57H010–01; 57H210–01; 57H610–01.	72–35–10	Insp/Check-02 ..	51A750
HPC 15th disk	55H615; 56H015; 57H715	72–35–92	Insp/Check-02 ..	51A750
HPT 1st stage airseal	50L663; 50L959; 53L003	72–52–19	Insp/Check-02 ..	51A750
HPT first stage hub	50L501; 51L601; 51L201; 52L401; 52L301 (51L901 Detail); 51L201–021 (51L201 Detail); 50L761 (52L201 Detail).	72–52–05	Insp/Check-02 ..	51A357
	52L901 (53L001 Detail); 52L701 (52L601 Detail); 53L121 (53L601 Detail); 53L021 (53L101 Detail).	72–52–05	Insp/Check-02 ..	51A750

Nomenclature (description)	Part No.	CIR manual section	CIR manual inspection	CIR manual
HPT 2nd stage airseal	50L926 (50L925 Detail)*; 50L976 (50L925 Detail)*; 50L960 (50L961 Detail)*; 50L993 (50L994 Detail)*.	72–52–22	Insp/Check-02 ..	51A750
HPT second stage hub	50L602–021 (50L602 Detail); 50L602–022 (50L602 Detail); 50L602–023 (50L602 Detail); 50L602–024 (50L602 Detail); 50L602–001; 50L902–021 (50L902 Detail); 50L902–022 (50L902 Detail); 52L002–021 (52L002 Detail); 52L402 (52L002 Detail); 52L802 (52L002 Detail); 53L602 (52L002 Detail).	72–52–06	Insp/Check-02 ..	51A357
	52L702 (52L102 Detail); 53L232 (53L202 Detail); 53L332 (53L402 Detail); 53L042 (53L702 Detail).	72–52–06	Insp/Check-02 ..	51A750

*These parts must be inspected at the Detail level (metering plugs and Dampers must be removed). Assembly P/N is listed only for reference and consistency with PW Manuals.

Except as noted, all parts may be inspected at any part number level of disassembly listed in the Table above.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manuals to either the detail or assembly level part numbers listed in the Table above (except as noted); and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits Section of the manufacturer's EMs.

Alternative Method of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits Section of the EMs and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the EMs.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26136 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would require revisions to the Time Limits Section (TLS) of the General Electric Company CF34 Series Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts at each piece-part exposure. This proposal would also require an air carrier's approved continuous airworthiness maintenance program to incorporate these inspection procedures. Air carriers with an approved continuous airworthiness maintenance program would be allowed to either maintain the records showing the current status of the inspections using the record keeping system specified in the air carrier's maintenance manual, or establish an acceptable alternate method of record keeping. This proposal is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this proposed airworthiness directive (AD) are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location

between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (238) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NE–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A recent Federal Aviation Administration (FAA) study analyzing 15 years of accident data for transport category airplanes identified several failure mode root causes that can result in serious safety hazards to transport category airplanes. This study identified uncontained failure of critical life-limited rotating engine parts as the leading engine-related safety hazard to airplanes. Uncontained engine failures have resulted from undetected cracks in rotating parts that initiated and propagated to failure. Cracks can originate from causes such as unintended excessive stress from the original design, or they may initiate from stresses induced from material flaws, handling damage, or damage from machining operations. The failure of rotating parts can present a significant safety hazard to the airplanes by release of high energy fragments that could injure passengers or crew by penetrating of the cabin, damaging flight control surfaces, severing flammable fluid lines, or otherwise compromising the airworthiness of the airplane.

Intervention Strategy

Accordingly, the FAA has developed an intervention strategy to significantly reduce uncontained engine failures. This intervention strategy was developed after consultation with industry and will be used as a model for future initiatives. This intervention strategy is to conduct enhanced, nondestructive inspections of fan disks, certain high pressure turbine (HPT) rotor disks, and HPT rotor outer torque couplings, which could most likely result in a safety hazard to the airplane in the event of a fracture.

Future Rulemaking

The FAA is also considering the need for additional rule making. Future airworthiness directives (ADs) may be issued introducing additional intervention strategies to further reduce or eliminate uncontained engine failures.

Safety Critical Parts and Inspection Methods

Properly focused enhanced inspections require identification of the parts whose failure presents the highest safety hazard to the airplane, identifying the most critical features to inspect on these parts, and utilizing inspection procedures and techniques that improve crack detection. The FAA, with close cooperation of the engine manufacturers, has completed a detailed analysis that identifies the most safety significant parts and features, and the most appropriate inspection methods.

Critical life-limited high-energy rotating parts are currently subject to some form of recommended crack inspection when exposed during engine maintenance or disassembly. As a result of this AD, the inspections currently recommended by the manufacturer will become mandatory for those parts listed in the compliance section. Furthermore, the FAA intends that additional mandatory enhanced inspections resulting from this AD serve as an adjunct to the existing inspections. The FAA has determined that the enhanced inspections will significantly improve the probability of crack detection while the parts are disassembled during maintenance. All mandatory inspections must be conducted in accordance with detailed inspection procedures prescribed in the manufacturer's Turbofan Engine Manual.

Part 121 Operators

Additionally, this AD allows for air carriers operating under the provisions of 14 CFR part 121 with an FAA-approved continuous airworthiness maintenance program, and entities with whom those air carriers make arrangements to perform this maintenance, to verify performance of the enhanced inspections by retaining the maintenance records that include the inspections resulting from this AD, provided that the records include the date and signature of the person performing the maintenance action. These records must be retained with the maintenance records of the part, engine module, or engine until the task is repeated. This will establish a method of record preservation and retrieval typical to those in existing continuous airworthiness maintenance programs. Instructions must be included in an air carrier's maintenance manual providing procedures on how this record preservation and retrieval system will be implemented and integrated into the air carrier's record keeping system.

Proposed Actions

This proposal would require, within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) in the General Electric Company (GE) CF34 Series Turbofan Engine Manual, and, for air carriers, the approved continuous airworthiness maintenance program. GE, the manufacturer of CF34–3A1 and CF34–3B1 series turbofan engines, used on 14 CFR part 25 airplanes, has provided the FAA with a detailed proposal that identifies and prioritizes the critical life-limited rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. The enhanced inspections resulting from this AD will be conducted at piece-part opportunity, as defined below in the compliance section, rather than specific time inspection intervals.

Economic Analysis

The FAA estimates that 352 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions. The average labor rate is $60 per work hour. The total cost of the new inspections per engine would be approximately $120 per year. Using average shop visit rates, 275 engines are expected to be affected per year. The annual cost impact of the proposed AD on US operators is therefore estimated to be $33,000.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket 99–NE–49–AD.

Applicability: General Electric Company (GE) CF34–3A1 and –3B1 series turbofan engines, installed on but not limited to Bombardier Canadair CL601R (RJ) aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS), Chapter 5–21–00, of the GE CF34 Series Turbofan Engine Manual, SEI–756, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''9. *CF34–3A1 and CF34–3B1 Engine Maintenance Program—Shop Level Mandatory Inspection Requirements.*

A. This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements.

B. Piece-part exposure is defined as follows:

(1) For engines that utilize the ''On Condition'' maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions in the GAE engine authorized overhaul Engine Manual. The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the ''Hard Time'' maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the ''Minor Maintenance'' and ''Overhaul'' instructions in the GEAE engine authorized Engine Manual. The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part Name/Part No. (P/N)	Manual chapter/section/subject	Mandatory inspection
Fan Disk (all)	72–21–00, Inspection	All areas (FPI).[1] Bores (ECI).[2]
Stage 1 high pressure turbine (HPT) Rotor Disk (P/N 6078T93 and all reworked P/N rotor disks).	72–46–00, Inspection	All areas (FPI).[1] Bores (ECI).[2] Boltholes (ECI).[2] Air Holes (ECI).[2]
Stage 1 HPT Rotor Disk, P/N 5079T52	72–46–00, Inspection	All areas (FPI).[1] Bores (ECI).[2] Boltholes (ECI).[2] Air Holes (ECI).[2]
Stage 2 HPT Rotor Disk (P/N 6078T94 and all reworked P/N rotor disks).	72–46–00, Inspection	All areas (FPI).[1] Bores (ECI).[2] Boltholes (ECI).[2] Air Holes (ECI).[2]
Stage 2 HPT Rotor Disk, P/N 5079T53	72–46–00, Inspection	All areas (FPI).[1] Bores (ECI).[2]

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS—Continued

Part Name/Part No. (P/N)	Manual chapter/section/subject	Mandatory inspection
HPT Rotor Outer Torque Coupling (P/N 5041T67, PN 5079T64, and all reworked P/N couplings).	72–46–00, Inspection	All areas (FPI).[1] Bore (ECI).[2]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection''.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS, Chapter 5–21–00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI–756.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the GE CF34 Series Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26208 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–41–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–6, CF6–45, and CF6–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6–6, CF6–45, and CF6–50 series turbofan engines, that currently requires revisions to the Time Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional disk bore eddy current inspections (ECI) for the high pressure turbine rotor (HPTR) Stage 1 and 2 disks. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE–41-AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98-ANE–41-AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE–41-AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–18, Amendment 39–11124 (64 FR 17958, April 13, 1999), to require revisions to the Time Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6–6, CF6–45, and CF6–50 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, GE has developed additional focused inspection procedures. This proposal would add disk bore eddy current inspections (ECI) for the high pressure turbine rotor (HPTR) Stage 1 and 2 disks.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–18 to add disk bore ECI for the HPTR Stage 1 and 2 disks at each piece-part opportunity.

Economic Analysis

The FAA estimates that 730 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed new inspections, and that the average labor rate is $60 per work hour for a total approximate cost of $240 per engine. The FAA estimates that approximately 170 HPTR Stage 1 and 2 disks would be exposed to the piece-part level per year; therefore, the total annual cost for the added bore ECI is estimated to be $40,800.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11124 (64 FR 17958, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. 98–ANE–41–AD. Supersedes AD 99–08–18, Amendment 39–11124.

Applicability: General Electric Company (GE) CF6–6, CF6–45, and CF6–50 series turbofan engines, installed on but not limited to Airbus Industrie A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine shop manual chapter
For CF6–6 Engines:		
Disk, Fan Rotor Stage One	All	72–21–03 Paragraph 2.F. or Paragraph 2.A.B. Fluorescent-Penetrant Inspect, and 72–21–03 Paragraph 3 or 3.A. Eddy Current Inspection
Disk, HPT Rotor Stage One	All	72–53–03 Paragraph 1. One Fluorescent-Penetrant Inspect, and 72–53–03 Paragraph 4. Eddy Current Inspection of the HPTR Disk Rim Boltholes and 72–53–03 Paragraph 5. Disk Bore Area Eddy Current Inspection
Disk, HPT Rotor Stage Two	All	72–53–04 Paragraph 1. Florescent-Penetrant Inspect, and Paragraph 4. Eddy Current Inspection of the Stage 2 HPTR Disk Rim Boltholes and 72–53–04 Paragraph 5. Eddy Current Inspection of the Stage 2 Disk Inner Boltholes and 72–53–04 Paragraph 6. Disk Bore Area Eddy Current Inspection
For CF6–45, CF6–50 Engines:		

Part nomenclature	Part No. (P/N)	Inspect per engine shop manual chapter
Disk, Fan Rotor Stage One	All	Task 72–21–03–230–051 Fluorescent-Penetrant Inspection, and Task 72–21–03–250–002–052 Manual Eddy Current Inspection or 72–21–03–250–003–053 Automated Eddy Current Inspection
Disk, HPT Rotor Stage One	All	Task 72–53–03–230–001–059 Fluorescent-Penetrant Inspect Disk, and Task 72–53–03–250–052 Eddy Current Inspection of the HPTR Stage 1 Rim Boltholes, and Task 72–53–03–250–054 Disk Bore Area Eddy Current Inspection
Disk, HPT Rotor Stage Two	All	Task 72–53–04–230–001–057 Fluorescent-Penetrant Inspect Disk, and Task 72–53–04–250–053 Eddy Current Inspection of the HPTR Stage 2 Rim and/or Inner Boltholes, and Task 72–53–04–250–056 Disk Bore Area Eddy Current Inspection

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2) (vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine shop manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine shop manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26209 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–38–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain CFM International (CFMI) CFM56 series turbofan engines, that currently requires revisions to the Engine Time Limits section of applicable Engine Shop Manuals (ESMs) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add more CFM56 engine models to the AD's applicability and introduce additional inspections. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7138, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address

specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–38–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–38–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–16, Amendment 39–11122 (64 FR 17962, April 13, 1999), to require revisions to the Engine Time Limits section of the applicable Engine Shop Manuals (ESMs) for CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That AD was prompted by an FAA study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. That condition, if not corrected, could result in critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

New Inspection Procedures

Since the issuance of that AD, CFMI has developed additional focused inspection procedures. This proposal would add the CFM56–5, –5B, –5C, and –7B series engines to the AD's applicability. This proposal would also extend the currently required fluorescent penetrant inspections (FPI) and bore/dovetail eddy current inspections (ECI) to fan disks installed on the newly affected models, and extend the currently required high pressure turbine (HPT) disk FPI on the newly affected models as well. In addition, this AD would add, for all affected CFM56 engine models, HPT disk bore ECI. Finally, for all affected CFM56 engine models, this AD would add HPT front rotating air seal FPI, bore ECI, and bolthole ECI or focused FPI.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–16 to add more CFM56 engine models to the AD's applicability and introduce additional inspections. The inspections would be required at each piece-part opportunity.

Economic Analysis

There are approximately 6,953 engines of the affected design in the worldwide fleet. The FAA estimates that 2,453 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per engine for the fan disk inspection, 13 work hours for the HPT disk inspection, and 13 work hours for the HPT front rotating air seal inspection. The average labor rate is $60 per work hour. Using average shop visitation rates, 554 fan disks, 891 HPT disks, and 563 HPT front rotating air seals are expected to be affected per year. The total estimated annual cost of the proposed new inspections on US operators is approximately $2,131,320, or $870 per engine.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-11122 (64 FR 17962, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

CFM International: Docket No. 98–ANE–38–AD. Supersedes AD 99–08–16, Amendment 39–11122.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, –3C, –5, –5B, –5C, and –7B series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, Airbus Industrie A319, A320, A321, and A340 series, as well as Boeing E–3, E–6, and KC–135 (military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits section (chapter 05–11-00) of Engine Shop Manual (ESM) CFMI–TP.SM.4, for CFM56–2 series engines, ESM CFMI–TP.SM.6, for CFM56–2A/–2B series engines, ESM CFMI–TP.SM.5, for CFM56–3/–3B/–3C series engines, ESM CFMI–TP.SM.7 for CFM56–5 series engines, ESM CFMI–TP.SM.9 for CFM56–5B series engines, ESM CFMI–TP.SM.8 for CFM56–5C series engines, and ESM CFMI–TP.SM.10 for CFM56–7B series engines, and for air carrier operations, revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the Inspection/Check section instructions provided in the applicable manual sections listed below:

Engine models	Part name	Engine manual section	Inspection
All	Fan Disk (All Part Number (P/N)).	72–21–03	Disk Fluorescent Penetrant Inspection (FPI) and Disk Bore and Dovetail Eddy Current Inspection (ECI).
CFM56–2/–2A/–B/–3/–3B/–3C	High Pressure Turbine (HPT) Disk (All P/N).	72–52–02	Disk FPI and Disk Bore and Bold Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Disk (All P/N)	72–52–02	Disk FPI and Disk Bore ECI.
CFM56–2A/–2B/–3/–3B/–3C	HPT Front Rotating Air Seal (All P/N).	72–52–03	Disk FPI and Disk Bore and Bolt Hole(s) ECI.
CFM56–5/–5B/–5C/–7B	HPT Front rotating Air Seal (All P/N).	72–52–03	Disk FPI and Disk Bore ECI and Disk Bolt Hole(s) Focused FPI.
CFM56–2	HPT Front Rotating Air Seal (All P/N).	72–52–03	Disk FPI and Disk Bore ECI and Disk Bolt Hole(s) ECI *or* focused FPI as applicable.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Time Limits section of the manufacturer's ESM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the applicable ESM and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the ESM changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the applicable ESM.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26210 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–39–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) GE90 series turbofan engines, that currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules

Docket No. 98–ANE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–39–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–39–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–17, Amendment 39–11123 (64 FR 17961, April 13, 1999), to require revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) GE90 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, GE has developed additional focused inspection procedures. This proposal would add additional parts that would require enhanced inspection at each piece-part exposure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–17 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 26 engines installed on airplanes of US registry would be affected by this proposed AD, and that the average labor rate is $60 per work hour. The FAA estimates that the fan disk bore eddy current inspection (ECI) would take 4 work hours. The total cost of the new fan disk bore inspections per engine would be approximately $240. The FAA estimates that approximately 7 parts would be exposed to the piece-part level per year; therefore, the total cost for the added bore ECI inspections is estimated to be $1,680 per year.

The FAA estimates that the fan disk dovetail slot ultrasonic inspection (US) would take 6 work hours. The total cost of the new fan disk dovetail inspections per engine would be approximately $360. The FAA estimates that approximately 7 parts would be exposed to the piece-part level per year; therefore, the total cost for the added dovetail slot US inspections is estimated to be $2,520 per year.

The FAA estimates that the high pressure compressor (HPC) disk bore ECI would take 3 work hours. The total cost of the new HPC inspections per engine would be approximately $180. The FAA estimates that approximately 13 parts would be exposed to the piece-part level per year; therefore, the total cost for the added bore ECI inspections is estimated to be $2,340 per year.

The FAA estimates that the high pressure turbine (HPT) component bore ECI would take 3 hours. The total cost of the new HPT inspections per engine would be approximately $180. The FAA estimates that approximately 48 parts would be exposed to the piece-part level per year; therefore, the total cost for the added bore ECI inspections is estimated to be $8,640 per year.

The FAA estimates that the HPC component dovetail slot ECI inspection would take 3 work hours. The total cost of the new HPC component dovetail inspections per engine would be approximately $180. The FAA estimates that approximately 25 parts would be exposed to the piece-part level per year; therefore, the total cost for the added dovetail slot ECI inspections is estimated to be $4,500 per year.

The FAA estimates that the HPC component bolthole ECI inspection would take 2 work hours. The total cost of the new HPC bolthole inspections per engine would be approximately $120. The FAA estimates that approximately 21 parts would be exposed to the piece-part level per year; therefore, the total cost for the added bolthole ECI inspections is estimated to be $2,520 per year.

Six fluorescent penetrant inspections (FPI) that would be added by this proposed AD already exist in the engine manual and therefore there is no additional cost associated with these inspections.

The total for all of the additional inspections is estimated to be $22,200 per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11123 (64 FR 17961, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. 98–ANE–39–AD. Supersedes AD 99–08–17, Amendment 39–11123.

Applicability: General Electric Company (GE) GE90–76B/ –77B/ –85B/ –90B/ –92B series turbofan engines, installed on but not limited to Boeing 777 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''MANDATORY INSPECTIONS''.

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual chapter
For GE90 Engines:		
HPCR, Disk, Stage 7	All	72–31–07–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–07–230–051), and 72–31–07–200–001–001 Eddy Current Inspection (subtask 72–31–07–250–051 or 72–31–07–230–052 or 72–31–07–230–053.
HPTR, Interstage Seal	All	72–53–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–53–03–230–053), and 72–53–03–200–001–001 Eddy Current Inspection of the Bore.
Fan Disk, Stage 1	All	72–21–03–200–001–001 Fluorescent Penetrant Inspection (subtask 72–21–03–230–051), and 72–21–03–200–001–001 Eddy Current, and 72–21–03–200–001–001 Ultrasonic Inspection of Dovetail Slots.
HPTR Disk, Stage 1	All	72–53–02–200–001–002 Fluorescent Penetrant Inspection (subtask 72–53–02–160–051), and 72–53–02–200–001–002 Eddy Current Inspection of the Bore.
HPTR Disk, Stage 2	All	72–53–04–200–001–004 Fluorescent Penetrant Inspection (subtask 72–53–04–230–052), and 72–53–04–200–001–004 Eddy Current Inspection of the Bore.
HPCR Disk, Stage 1	All	72–31–05–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–05–230–051), and 72–31–05–200–001–001 Eddy Current Inspection of the Bore, and 72–31–05–200–001–001 Eddy Current Inspection of the Dovetail Slots.
HPCR Spool, Stage 2–6	All	72–31–06–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–06–230–051), and 72–31–06–200–001–001 Eddy Current Inspection of the S2 Dovetail Slots.
HPCR Seal, Compressor Discharge Pressure.	All	72–31–09–200–001–001 Fluorescent Penetrant Inspection (subtask 72–31–09–230–051), and 72–31–09–200–001–001 Eddy Current Inspection of the Boltholes.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the

work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26211 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–49–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A, CF6–80C2, and CF6–80E1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines, that currently requires revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional disk bore eddy current inspections (ECI) for the high pressure turbine rotor (HPTR) Stage 1 and 2 disks for all affected engine models, and would add fan forward shaft inspections for the CF6–80C2 engine model only. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7192, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–49–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–49–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–13, Amendment 39–11119 (64 FR 17951, April 13, 1999), to require revisions to the Life Limits Section of the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure.

New Inspection Procedures

Since the issuance of that AD, GE has developed additional focused inspection procedures. This proposal would add disk bore eddy current inspections (ECI) for the high pressure turbine rotor (HPTR) Stage 1 and 2 disks on all affected engine models, and would add fan forward shaft inspections for the CF6–80C2 engine model only.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–13 to add disk bore ECI for the HPTR Stage 1 and 2 disks on all affected engine models, and to add fan forward shaft inspections for the CF6–80C2 engine model only. The inspections would be required at each piece-part opportunity.

Economic Analysis

The FAA estimates that 700 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed new disk bore ECI for the HPTR Stage 1 and 2 disks on all affected engine models, and that the average labor rate is $60 per work hour. The total cost of the new disk bore ECI for the HPTR Stage 1 and 2 disks inspections per engine would be approximately $240. The FAA estimates that approximately 83 HPTR Stage 1 and 2 disks would be exposed to the piece-part level per year; therefore, the total annual cost for the added bore ECI is estimated to be $19,920.

The FAA estimates that it would take approximately 4 work hours per engine to accomplish the proposed new fan forward shaft inspections on the CF6–80C2 engine model. The total cost of the new fan forward shaft inspections per

engine would be approximately $240. The FAA estimates that approximately 31 fan forward shafts would be exposed to the piece-part level per year; therefore, the total annual cost for the added fan forward shaft inspections is estimated to be $7,440.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-11119 (64 FR 17951, April 13, 1999), and by adding a new airworthiness directive, to read as follows:

General Electric Company: Docket No. 98–ANE–49–AD. Supersedes AD 99–08–13, Amendment 39–11119.

Applicability: General Electric Company (GE) CF6–80A, CF6–80C2, and CF6–80E1 series turbofan engines, installed on but not limited to Airbus Industrie A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Life Limits Section of the Instructions for Continued Airworthiness (ICA), and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following: ''MANDATORY INSPECTIONS''

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

Part nomenclature	Part No. (P/N)	Inspect per engine manual
For CF6–80A Engines:		
Disk, Fan Rotor, Stage 1	All	72–21–03 Paragraph 3. Fluorescent-Penetrant Inspect, and 72–21–03 Paragraph 4. Eddy Current Inspect.
Disk, HPT Rotor, Stage One	All	72–53–02 Paragraph 3. Fluorescent-Penetrant-Inspect Disk/Shaft per 70–32–02, and 72–53–02 Paragraph 6. Eddy Current Inspection, and 72–53–02 Paragraph 7. Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor, Stage Two	All	72–53–06 Paragraph 3. Fluorescent-Penetrant Inspection, and 72–53–06 Paragraph 6. Eddy Current Inspection of Rim Boltholes for Cracks, and 72–53–06 Paragraph 7. Disk Bore Area Eddy Current Inspection.
For CF6–80C2 Engines:		
Disk, Fan Rotor, Stage 1	All	Task 72–21–03–200–000–004 Fluorescent-Penetrant Inspection, and Task 72–21–03–200–000–008 Eddy Current Inspect Fan Rotor Disk Stage 1 Bore, Forward and Aft Hub Faces, and Bore Radii.
Shaft, Fan Forward,	All	Task 72–21–05–200–000–001 Fluorescent Penetrant Inspection, and Task 72–21–05–200–000–005 Vent Hole Eddy Current Inspection.
Disk, HPT Rotor Stage One	All	Task 72–53–02–200–000–001 Fluorescent-Penetrant Inspect the HPT Rotor Stage 1 Disk/Shaft, and Task 72–53–02–200–000–005 Eddy Current Inspection, and Task 72–53–02–200–000–006 Disk Bore Area Eddy Current Inspection.
Disk, HPT Rotor Stage Two	All	Task 72–53–06–200–000–002 Fluorescent-Penetrant Inspect the Stage 2 Disk, and Task 72–53–06–200–000–006 Eddy Current Inspection of the HPTR Stage 2 Rim Boltholes, and Task 72–53–06–200–000–007 Disk Bore Area Eddy Current Inspection.
For CF6–80E1 Engines:		
Disk, Fan Rotor, Stage One	All	Task 72–21–03–230–051 Fluorescent-Penetrant Inspection, and Task 72–21–03–250–051 or 72-21–03–250–052 Eddy Current Inspection.
HPT Disk, Stage One	All	Task 72–53–02–230–51 Fluorescent-Penetrant Inspection, and Task 72–53–02–200–001–005 Eddy Current Inspection, and Task 72–53–02–200–001–006 Disk Bore Area Eddy Current Inspection.
HPT Disk, Stage Two	All	Task 72–53–06–230–051 Fluorescent-Penetrant Inspection, and Task 72–53–06–200–001–006 Eddy Current Inspection of the HPTR Stage 2 Rim Boltholes, and Task 72–53–06–200–001–007 Disk Bore Area Eddy Current Inspection.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when accomplished in accordance with the disassembly instructions in the manufacturer's engine manual; and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the Life Limits Section of the manufacturer's ICA.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the Life Limits Section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26212 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Pratt & Whitney JT8D series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the JT8D Turbofan Engine Manuals to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9–ane–adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–48–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 1, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–12–03, Amendment 39–11187 (64 FR 30379, June 8, 1999), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series Turbofan Engine Manuals to include required enhanced inspection of selected critical

life-limited parts at each piece-part exposure. That AD was prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. That condition, if not corrected, could result in critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

New Inspection Procedures

Since the issuance of that AD, PW has developed additional focused inspection procedures. This proposal would add first stage high pressure (HP) turbine disks and shafts that would require enhanced inspection at each piece-part exposure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–12–03 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 5,821 engines installed on airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks and shafts. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the U.S. fleet of $2,794,080 per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11187 (64 FR 30379, June 8, 1999), and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–48–AD. Supersedes AD 99–12–03, Amendment 39–11187.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series turbofan engines, installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series Turbofan Engine Manuals, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece-parts and the inspection procedures which are necessary when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

ENGINE MANUAL

Description	Section	Inspection
Hub (Disk), 1st Stage Compressor		
491201	72–33–31	–02, –03, –04
496501	72–33–31	–02, –03, –04
504101	72–33–31	–02, –03, –04
515201	72–33–31	–02, –03, –04
594301	72–33–31	–02, –03, –04
640501	72–33–31	–02, –03, –04
640601	72–33–31	–02, –03, –04
743301	72–33–31	–02, –03, –04
749701	72–33–31	–02, –03, –04
749801	72–33–31	–02, –03, –04
750001	72–33–31	–02, –03, –04
750101	72–33–31	–02, –03, –04
778901	72–33–31	–02, –03, –04
791401	72–33–31	–02, –03, –04
791501	72–33–31	–02, –03, –04
791601	72–33–31	–02, –03, –04
791701	72–33–31	–02, –03, –04
791801	72–33–31	–02, –03, –04
806001	72–33–31	–02, –03, –04
806101	72–33–31	–02, –03, –04
817401	72–33–31	–02, –03, –04
844401	72–33–31	–02, –03, –04
845401	72–33–31	–02, –03, –04
848001	72–33–31	–02, –03, –04
848101	72–33–31	–02, –03, –04
Disk, 2nd Stage Compressor		
482502	72–33–33	–02
502502	72–33–33	–02
520602	72–33–33	–02
570302	72–33–33	–02
570402	72–33–33	–02
678202	72–33–33	–02
730202	72–33–33	–02
730302	72–33–33	–02

ENGINE MANUAL—Continued

Description	Section	Inspection
730402	72–33–33	–02
740502	72–33–33	–02
745702	72–33–33	–02
745902	72–33–33	–02
746002	72–33–33	–02
746802	72–33–33	–02
760402	72–33–33	–02
760502	72–33–33	–02
807502	72–33–33	–02
500240201	72–33–33	–02
790832 (Disk assembly).	72–33–33	–02
Turbine Disk, First Stage With Integral Shaft		
481135	72–52–04	–03
494211	72–52–04	–03
500701	72–52–04	–03
516101	72–52–04	–03
529115	72–52–04	–03
538901	72–52–04	–03
544501	72–52–04	–03
544601	72–52–04	–03
544701	72–52–04	–03
553201	72–52–04	–03
558401	72–52–04	–03
565101	72–52–04	–03
565201	72–52–04	–03
565301	72–52–04	–03
578201	72–52–04	–03
579001	72–52–04	–03
HP Turbine Disk, First Stage, Separable		
587501	72–52–02	–03
5006101–01 ...	72–52–02	–03
578001	72–52–02	–03
5005201–01 ...	72–52–02	–03
696801	72–52–02	–03
742501	72–52–02	–03
752401	72–52–02	–03
767601	72–52–02	–03
792801	72–52–02	–03
856501	72–52–02	–03
832201	72–52–02	–03
855701	72–52–02	–03
856401	72–52–02	–03
5003601–01 ...	72–52–02	–03
5003601–021	72–52–02	–03
5004301–01 ...	72–52–02	–03"

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series Turbofan Engine Manuals.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series Turbofan Engine Manuals, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A, –17, –17A, –17R, and –17AR series Turbofan Engine Manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26213 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires revisions to the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures that have been developed by the manufacturer. The actions specified by this proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 6, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD,12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney,Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–43–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–43–AD,12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On June 1, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–12–04, Amendment 39–11188 (64 FR 30382, June 8, 1999), to require revisions to the Time Limits Section (TLS) of the Pratt & Whitney (PW) JT8D–200 Turbofan Engine Manual to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That AD was prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. That condition, if not corrected, could result in critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

New Inspection Procedures

Since the issuance of that AD, PW has developed additional focused inspection procedures. This proposal would add first stage high pressure (HP) turbine disks that would require enhanced inspection at each piece-part exposure.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–12–04 to add additional critical life-limited parts for enhanced inspection at each piece-part opportunity.

Economic Analysis

The FAA estimates that 1,279 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to perform the enhanced inspection for the first stage HP turbine disks. The average labor rate is $60 per work hour. The cost impact of the added inspections per engine is approximately $480 per year, with the approximate total cost for the US fleet of $613,920 per year.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11188 (64 FR 30382, June 8, 1999), and by adding a new airworthiness directive, to read as follows:

Pratt & Whitney: Docket No. 98–ANE–43–AD. Supersedes AD 99–12–04, Amendment 39–11188.

Applicability: Pratt & Whitney (PW) JT8D–209, –217, –217A, –217C, and –219 series turbofan engines, installed on but not limited to McDonnell Douglas MD80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the Time Limits Section (TLS) of the JT8D–200 Turbofan Engine Manual, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

''Critical Life Limited Part Inspection

A. Inspection Requirements

(1) This section has the definitions for individual engine piece-parts and the inspection procedures, which are necessary, when these parts are removed from the engine.

(2) It is necessary to do the inspection procedures of the piece-parts in Paragraph B when:

(a) The part is removed from the engine and disassembled to the level specified in paragraph B and

(b) The part has accumulated more than 100 cycles since the last piece part

inspection, provided that the part is not damaged or related to the cause of its removal from the engine.

(3) The inspections specified in this section do not replace or make unnecessary other recommended inspections for these parts or other parts.

B. Parts Requiring Inspection

Note: Piece part is defined as any of the listed parts with all the blades removed.

Description	Engine manual	
	Section	Inspection
Hub (Disk), 1st Stage Compressor:		
5000501–01 (Hub detail)	72–33–31	–02, –03
5000421–01 (Hub assembly)	72–33–31	–02, –03
HP Turbine Disk, First Stage:		
804301	72–52–02	–03
5004501–01 ..	72–52–02	–03
856701	72–52–02	–03
5004301–01 ..	72–52–02	–03
x832201	72–52–02	–03
855701	72–52–02	–03
856601	72–52–02	–03"

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the TLS of the PW JT8D–200 Turbofan Engine Manual.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Continuous Airworthiness Maintenance Program

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)) of this chapter must maintain records of the mandatory inspections that result from revising the TLS of the PW JT8D–200 Turbofan Engine Manual, and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations (14 CFR 121.369(c)); however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)). All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the PW JT8D–200 Turbofan Engine Manual.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–26214 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–226–165b; FRL–6448–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action revises Santa Barbara Air Pollution Control District (SBCAPCD) Rule 102, Definitions, to include text that was inadvertently omitted and revises the volatile organic compound (VOC) definition in South Coast Air Quality Management District (SCAQMD) Rule 102, Definition of Terms.

The intended effect of proposing approval of this action is to incorporate changes to the definitions for clarity and consistency with revised federal and state definitions. EPA is proposing approval of this revision to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this administrative change as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 8, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, California 93117

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION:

This document concerns Santa Barbara County Air Pollution Control District Rule 102, Definitions, and South Coast Air Quality Management District Rule 102, Definition of Terms. These rules were submitted to EPA on May 13, 1999 by the California Air Resources

Board. For further information, please see the information provided in the Direct Final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 10, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–26069 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0031; FRL–6453–3]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Opacity and Sulfur Dioxide Requirements; Supplemental Notice of Proposed Rulemaking; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking; extension of the comment period.

SUMMARY: On September 2, 1999, EPA proposed to disapprove a revision to the Colorado State Implementation Plan (SIP) regarding exemptions from opacity and sulfur dioxide (SO_2) emission limitations at coal-fired electric utility boilers (64 FR 48127). Specifically, on May 27, 1998, the State submitted revisions to Colorado Regulation No. 1 to provide coal-fired electric utility boilers with certain exemptions from the State's pre-existing limitations on opacity and SO_2 emissions during periods of startup, shutdown, and upset. EPA proposed to disapprove the SIP revision because EPA did not consider it to be consistent with the Clean Air Act (Act) and applicable Federal requirements. The comment period on the proposed disapproval closed October 4, 1999.

On September 17, 1999, EPA received a request to extend the public comment period on the proposed disapproval. In addition, on September 20, 1999, EPA issued an updated policy for SIP provisions that address excess emissions during malfunctions, startup, and shutdown. EPA has reviewed the State's May 27, 1998 SIP submittal in light of the September 20, 1999 policy, and EPA continues to believe that Colorado's SIP submittal is not approvable for all of the reasons outlined in the September 2, 1999 proposed rulemaking. However, in order to provide the public with an opportunity to comment on this topic, EPA is issuing this supplemental notice of proposed rulemaking. In addition, EPA is extending the public comment period on all of the issues raised in the September 2, 1999 proposed disapproval, in response to the request for extension received on September 17, 1999. Thus, the public will have thirty days from the publication of this document to submit comments both on EPA's September 2, 1999 proposed disapproval of Colorado's SIP submittal and this supplemental notice regarding the proposed disapproval.

DATES: Written comments must be received on or before November 8, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA, Region VIII, (303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Background

On September 2, 1999, EPA proposed to disapprove a revision to Colorado's SIP that was submitted by the State on May 27, 1998. (See 64 FR 48127–48135.) The SIP submittal consisted of revisions to Colorado Regulation No. 1 to provide exemptions from the existing limitations on opacity and SO_2 emissions for coal-fired electric utility boilers during periods of startup, shutdown, and upset. For further details on the State's regulation revision, please refer to Section I. of EPA's September 2, 1999 proposed rulemaking. (See 64 FR 48127–48128.)

The public comment period for EPA's September 2, 1999 proposed rulemaking ended on October 4, 1999. On September 17, 1999, EPA received a request to extend the public comment period.

On September 20, 1999, the Agency issued an update to its existing policy regarding excess emissions during startup, shutdown, and malfunctions. (See September 20, 1999 Memorandum entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and from Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators.) EPA's pre-existing policy on excess emissions during startup, shutdown, and malfunctions was stated in two memos dated September 28, 1982 and February 15, 1983, both entitled ''Policy on Excess Emissions During Startup, Shutdown, and Malfunctions,'' from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators. In EPA's September 2, 1999 proposal to disapprove Colorado's revisions to Regulation No. 1, EPA identified several issues with the revisions. Among these issues, EPA proposed to find that the revisions were inconsistent with the Act's requirements that SIP emission limits be met on a continuous basis, and based part of its analysis on the 1982 and 1983 Bennett memos. Since the agency has now issued an update to these pre-existing policy statements, EPA is issuing this supplemental notice in order to provide review of Colorado's SIP submittal in light of this updated policy and to provide the public with the opportunity to comment on this topic.

Since EPA received a request to extend the public comment period on the September 2, 1999 proposed disapproval, EPA is also providing an additional thirty days to comment on all of the issues raised in the September 2, 1999 proposed rulemaking. Thus, during this comment period, EPA will accept comments on any issue raised in our September 2, 1999 proposed disapproval as well as on any issue raised in this supplemental notice of proposed rulemaking.

II. EPA's Review of State's Submittal in Light of EPA's September 20, 1999 Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown

EPA's September 20, 1999 policy does not alter the Act's requirement that SIP emission limitations be met continuously. Instead, the September 20, 1999 policy clarifies the types of SIP provisions States may adopt to address startup, shutdown, and malfunction conditions and still ensure continuous compliance with emission limits needed to attain or maintain the national ambient air quality standards (NAAQS).

The revisions to Regulation No. 1 are not consistent with EPA's September 20, 1999 policy, and EPA continues to believe the revisions will not ensure continuous compliance with SIP emissions limits.

A. Description of EPA's September 20, 1999 Policy

The purpose of EPA's September 20, 1999 policy was to reaffirm and supplement EPA's September 28, 1982 and February 15, 1983 policy statements regarding excess emissions during malfunctions, startup, shutdown, and maintenance, as well as to clarify several issues of interpretation that have arisen since EPA issued those policy statements. In the September 20, 1999 policy, EPA states that ''* * * because excess emissions might aggravate air quality so as to prevent attainment or maintenance of the ambient air quality standards, EPA views all excess emissions as violations of the applicable emission limitation.'' However, EPA recognizes that imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of an owner or operator may not be appropriate. EPA similarly recognizes that the imposition of a penalty for excess emissions that occur during infrequent and short periods of startup and shutdown may not be appropriate when such excess emissions could not have been prevented through careful planning and design and when bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Accordingly, a State or EPA can exercise its ''enforcement discretion'' to refrain from taking an enforcement action in these circumstances.

The September 20, 1999 policy clarifies that a State may go beyond this ''enforcement discretion approach'' and include in its SIP a provision that would, in the context of an enforcement action for excess emissions, excuse a source from penalties (but not from injunctive relief) if the source can demonstrate that it meets certain objective criteria (i.e., an ''affirmative defense''). The September 20, 1999 policy provides that States can adopt SIP rules that provide for such an affirmative defense to actions for penalties brought for excess emissions that arise during certain malfunction, startup, and shutdown episodes, if the SIP rules and SIP submittal meet certain criteria.

The September 20, 1999 policy discusses an additional means to address excess emissions during periods of startup and shutdown. The policy states that because, in general, excess emissions that occur during these periods are reasonably foreseeable, they should not be excused. However, for some source categories, even the best available emissions control systems might not be consistently effective during startup or shutdown periods. The September 20, 1999 policy provides that, in certain situations, these technological limitations may be addressed in the underlying standards themselves through narrowly-tailored SIP revisions that meet the requirements detailed in the policy and that take into account the potential impacts on ambient air quality caused by the inclusion of these allowances.

B. Review of Colorado's May 27, 1998 SIP Submittal in Light of EPA's September 20, 1999 Policy

1. Affirmative Defense Provisions for Malfunctions, Startup, and Shutdown

As discussed above, the September 20, 1999 policy provides that States can adopt SIP provisions that create an affirmative defense to claims for penalties for excess emissions caused by malfunctions or during periods of startup or shutdown, if the SIP revision and submittal adequately address the criteria detailed in the September 20, 1999 policy. Such an affirmative defense must not be available for claims for injunctive relief and must not apply in the case where a single source or small group of sources has the potential to cause an exceedance of the NAAQS or prevention of significant deterioration (PSD) increment.

Colorado's revisions to Regulation No. 1 do not meet EPA's requirements for an acceptable affirmative defense provision. In fact, the revisions do not constitute an affirmative defense provision at all; they do not merely provide for a source to raise a defense to penalties in an enforcement proceeding for violations of an emission standard. Instead, Colorado's revisions to Regulation No. 1 automatically exempt a source from meeting the otherwise applicable opacity and SO_2 emission limitations during startup, shutdown, and upset. Thus, EPA does not believe it can approve the revisions as an affirmative defense provision.[1] EPA believes an affirmative defense provision must be consistent with the criteria contained in the September 20, 1999 policy to ensure continuous compliance with the requirements of the Act.

2. Source Category-Specific Rules for Startup and Shutdown

As discussed above, the September 20, 1999 policy states that, for some source categories, given the types of control technologies available, there may exist short periods of emissions during startup and shutdown when, despite best efforts regarding planning, design, and operating procedures, the otherwise applicable emission limitation cannot be met. The September 20, 1999 policy further provides that, except in the case where a single source or small group of sources has the potential to cause an exceedance of the NAAQS or PSD increments, it may be appropriate, in consultation with EPA, to create narrowly-tailored SIP revisions that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during narrowly defined startup and shutdown periods. To be approved, these revisions should meet the following requirements:

a. The SIP revision must be limited to specific, narrowly-defined source categories using specific control strategies;

b. There must be a demonstration that the use of the control strategy for this source category must be technically infeasible during startup or shutdown periods;

c. The frequency and duration of operation in startup or shutdown mode must be minimized to the maximum extent practicable;

d. As part of its justification of the SIP revision, the state should analyze the potential worst-case emissions that could occur during startup and shutdown, in order to show compliance with the applicable requirements of the Act and EPA regulations;

e. All possible steps must be taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

f. At all times, the facility must be operated in a manner consistent with good practice for minimizing emissions, and the source must have used best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limitation; and

g. The owner or operator's actions during startup and shutdown periods must be documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[1] Even if the revisions met the other criteria for an acceptable affirmative defense provision, EPA does not have adequate information to determine whether a single coal-fired electric utility boiler or a small group of boilers would have the potential to cause an exceedance of the NAAQS or PSD increments, which would render an affirmative defense provision inappropriate.

As discussed above and in the September 2, 1999 proposed disapproval, Colorado's revisions to Regulation No. 1 provide exemptions from the existing opacity and SO_2 emission limitations for coal-fired electric utility boilers during periods of startup and shutdown, as well as upset. EPA does not believe that Colorado's revisions to Regulation No. 1 regarding startup, shutdown, and upset comport with the requirements for approval of such provisions as discussed in EPA's September 20, 1999 policy. First, EPA's September 20, 1999 policy, as discussed above, allows SIPs to provide for exemptions from emission limitations for periods of startup and shutdown only. Colorado's revisions to Regulation No. 1 also exempt coal-fired electric utility boilers from meeting existing opacity and SO_2 emission limitations during periods of upset.

Second, the exemption from the SO_2 limits does not appear to specify coal-fired electric utility boilers using a particular SO_2 control strategy. Thus, at least as to SO_2, it does not appear that the revisions are consistent with the policy's provision that a rule must be limited to narrowly-defined source categories using specific control strategies.

Third, the State has not demonstrated that use of the applicable control strategies for opacity and SO_2 for coal-fired electric utility boilers is technologically infeasible during startup and shutdown.

Further, as discussed in EPA's September 2, 1999 proposed disapproval, EPA does not believe the State has analyzed the potential worst case emissions that could occur from these facilities during startup and shutdown and the corresponding impact on ambient air quality. The State did not adequately analyze potential impacts on the NAAQS, nor did the State analyze potential impacts on the PSD increments. (See sections II.B.2. and 3. of the September 2, 1999 proposed disapproval, 64 FR 48130–48131.)

EPA also does not have adequate information to determine whether a single coal-fired electric utility boiler or a small group of boilers would have the potential to cause an exceedance of the NAAQS or PSD increment, which would preclude EPA from approving a source category-specific exemption under the September 20, 1999 policy. The SIP revision does not adequately address the other requirements of the September 20, 1999 policy applicable to source category exemptions for excess emissions that occur during startup and shutdown. EPA believes source category exemptions for startup and shutdown events must be narrowly constrained, as described in EPA's September 20, 1999 policy, to ensure the Act's requirements are met and that public health and the environment are protected.

In summary, the issuance of the September 20, 1999 policy has not changed EPA's preliminary conclusions, expressed in the September 2, 1999 proposed disapproval, that the revisions to Regulation No. 1 are not consistent with the Act's requirements related to continuous compliance with SIP limits. Because the requirements for continuous compliance have not been met, and for the other reasons expressed in EPA's September 2, 1999 notice of proposed disapproval, EPA continues to propose disapproval of the revisions to Colorado Regulation No. 1. EPA also continues to invite comment on whether the SIP revision conflicts with EPA's any credible evidence rule (see Section II.B.6. of the September 2, 1999 proposed disapproval, 64 FR 48134).

EPA is soliciting public comment on the issues discussed in this document or on other relevant matters. EPA is also extending the public comment period on the issues raised in the September 2, 1999 proposed disapproval. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this document such that the comments will be received by the date listed in the Dates section of this document.

III. Proposed Action

EPA continues to propose disapproval of the revision to the Colorado SIP pertaining to the opacity and SO_2 provisions in Regulation No. 1, which was submitted by the Governor of Colorado on May 27, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this proposed regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's proposed rule would not create a mandate on state, local, or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This proposed rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612. The proposed rule would affect only one State, and would not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to

mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. EPA is proposing disapproval of a State rule revision, which will have no impact on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because EPA's proposed disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act, would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed disapproval would not change existing requirements and would include no Federal mandate. If EPA were to disapprove the State's SIP submittal, pre-existing requirements would remain in place and State enforceability of the submittal would be unaffected. The action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this proposed action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 30, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–26200 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 264

[FRL–6452–9]

RIN 2050–AB80

Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Partial withdrawal of rulemaking proposal.

SUMMARY: The Environmental Protection Agency (EPA) is announcing our decision to withdraw most provisions of the Notice of Proposed Rulemaking (NPRM) for corrective action for solid waste management units (SWMUs) at hazardous waste management facilities (also known as the 1990 Subpart S proposal) published on July 27, 1990. The only exceptions to this decision relate to two jurisdictional issues and those elements of the proposed rule that were promulgated as a final rule on February 16, 1993. The jurisdictional issues relate to the definition of ''facility'' for corrective action purposes and the question of who is responsible for corrective action when there is a transfer of facility property. We plan to withdraw most of the proposed rule because we have determined that such regulations are not necessary to carry out the Agency's duties under sections 3004(u) and (v). Additionally, attempting to promulgate a comprehensive set of RCRA regulations at this time could unnecessarily disrupt the 33 State programs already authorized to carry out the Corrective Action Program in lieu of EPA, as well as the additional State programs currently undergoing review for authorization. This decision will end uncertainty related to this rulemaking for State regulators and owners and operators of hazardous waste management facilities.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–1999–CASW–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. (See the Supplementary Information section for information on accessing them.)

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this action, contact Barbara Foster, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 (703) 308–7057, e-mail address: foster.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and the following supporting materials are available on the Internet: (1) Letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force, to Michael Shapiro, January 9, 1997; (2) Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities, September 24, 1996; (3) Memorandum from Elliott P. Laws and Steven A. Herman to RCRA/CERCLA Senior Policy Managers entitled ''Use of the Corrective Action Advance Notice of Proposed Rulemaking as Guidance'', January 17, 1997; and (4) Letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force, to EPA RCRA Docket #F–96–CA2P–FFFFF, July 30, 1997. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/correctiveaction
FTP: ftp.epa.gov
Login: anonymous
Password: *foster.barbara@epamail.epa.gov*
Files are located in /pub/epaoswer

I. Authority

The provisions of the 1990 proposed rule were proposed under the authority of sections 1003, 1006, 2002(a), 3004(a), 3004(u), 3004(v), 3005(c) and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6902, 6905, 6912(a), 6924(a), (u) and (v), 6925(c), and 6927.

II. Background

In the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), Congress expanded EPA's authority to address cleanup at permitted RCRA hazardous waste management facilities by providing new corrective action authority under RCRA sections 3004(u) and (v). Section 3004(u) requires that RCRA regulations and permits require corrective action as necessary to protect human health and the environment at facilities seeking a permit. Section 3004(v) extended the requirement to releases beyond the facility boundary. EPA codified this broad authority in RCRA section 3004(u) essentially verbatim at 40 CFR 264.90(a)(2), 264.101, 270.60(b), and 270.60(c) in a final rule published on July 15, 1985 (50 FR 28702). EPA later did the same for section 3004(v) on December 1, 1987 (52 FR 45785).[1]

On July 27, 1990 (55 FR 30798), EPA published a NPRM detailing substantive and procedural requirements under 40 CFR Part 264 Subpart S to implement the corrective action program. The Agency promulgated a few elements of the 1990 proposal on February 16, 1993 (58 FR 8658). These elements included final provisions for Corrective Action Management Units (CAMUs) and Temporary Units, and a definition of ''facility'' for corrective action. The remainder of the 1990 proposal has not been made final. However, EPA and authorized States began using the proposed rule and preamble as the primary guidance for the corrective action program soon after it was published.

RCRA section 3006(g) called for the corrective action requirements imposed by sections 3004(u) and 3004(v) to take effect in all States at the same time they would take effect federally, regardless of the State's authorization status. The statute further directed the Agency to carry out those requirements until the State is granted authorization to do so. To date, EPA has authorized 33 States to implement the requirements of sections 3004(u) and (v) in lieu of EPA. To determine whether the State program was ''equivalent'' to the Federal program, EPA referred to the Federal regulations pertaining to corrective action, the guidance provided by the 1990 Subpart S proposal, and other Agency guidance.

On May 1, 1996 (61 FR 19432), the Agency published an ANPRM. In the 1996 ANPRM, EPA introduced its new ''Subpart S Initiative,'' which was designed to identify and implement improvements to the protectiveness, responsiveness, speed, and efficiency of the corrective action program. The Agency also discussed corrective action implementation and the evolution of the program since 1990, and set forth its goals and strategy for the future of the corrective action program. The 1996 ANPRM provided guidance on areas of the program not addressed by the 1990 proposal, and replaced the 1990 proposal as the primary guidance for much of the corrective action program (*see* memorandum from Elliott P. Laws and Steven A. Herman to RCRA/CERCLA Senior Policy Managers entitled ''Use of the Corrective Action Advance Notice of Proposed Rulemaking as Guidance'', January 17, 1997, located in the docket for this action). Finally, in the 1996 ANPRM, the Agency requested comment on the future direction of the corrective action program, including resolution of the 1990 proposal.

III. Decision To Withdraw the Majority of the Notice of Proposed Rulemaking

As part of the Subpart S Initiative, the Agency assessed the issue of whether to promulgate a final Subpart S rule (*see* 61 FR 19455–6 asking for comment on the appropriate ''balance between guidance/policy documents and regulations'' for implementing RCRA corrective action authorities). As was discussed in the ANPRM (*see* 61 FR 19432 at 19440), the Agency has long recognized that no one approach to corrective action is likely to be appropriate at all sites. The diversity of facilities subject to RCRA corrective action, the degree of investigation and subsequent corrective action necessary to protect human health and the environment varies greatly across facilities. Because of this, some facilities require no cleanup at all or only minor corrective action, while others are as complex and highly contaminated as sites on the CERCLA National Priorities List (Superfund sites). Thus, in drafting the 1990 proposal, the Agency sought to create a rule that, although it contained extensive procedures for making corrective action decisions, would

[1] In the December 1, 1987 final rule, the Agency also promulgated corrective action permit application requirements and modified corrective action requirements for underground injection wells.

accommodate the need to vary those procedures based on site-specific circumstances. It has been the Agency's experience, however, that the Subpart S proposal as guidance has, at times, been implemented prescriptively and the intended flexibility underused. Commenters on the ANPR echoed the Agency's assessment on this point.

Therefore, the Agency concluded, if we were to proceed with a final rule instituting a comprehensive regulatory scheme for RCRA corrective action, it would be appropriate to rethink the general approach to writing a set of comprehensive regulations. In particular, since the instances of program inflexibility could be attributed, at least in part, to rule language that heavily emphasized standard processes for making corrective action decisions, the Agency reasoned that it would be appropriate to recraft the proposed RCRA regulations to take the focus off process and place it on results.[2]

Likewise, many commenters urged the Agency to reject the approach of the 1990 proposal in favor of a more ''holistic'' and flexible approach. However, commenters also urged the Agency not to go forward with any final rule without first reproposing the entire program, to provide opportunity for public comment on the overall approach. The Agency agrees with commenters that, if we were to go forward with regulations significantly different from the 1990 proposal, fairness would dictate an additional round of public comment.

Therefore, before proceeding anew down the resource-intensive path of promulgating a comprehensive rule, we decided it was appropriate to reevaluate the pros and cons of proceeding with a comprehensive rule, especially since the program has been conducted without one for 14 years, and the landscape of the RCRA corrective action program has changed significantly over that time. Having engaged in this analysis, we have decided not to promulgate a final rule for the corrective action program at this time. Instead we will continue to rely on existing regulations (including those provisions of the Subpart S proposal already promulgated), supplemented by current and planned guidance and enhanced training, to implement the corrective action program. We chose this approach for several reasons.

First, one of our primary objectives for promulgating a comprehensive rule in 1990 was to ''establish standards to which States seeking authorization for RCRA section 3004(u) corrective action must demonstrate equivalence'' (55 FR 30800). While it is true that detailed regulations can make authorization determinations somewhat easier, circumstances have changed in the years since publication of the proposal. We now believe that it is not necessary to promulgate additional regulations to review State programs. To date, EPA has authorized 33 State programs to implement the corrective action program in lieu of the Federal government. The authorization process consists of extensive up-front review of State programs, using existing regulations supplemented by existing guidance (including, most recently, the ANPRM and portions of the 1990 proposal that were not superceded) outlining what types of corrective action are generally ''necessary to protect human health and the environment.'' There have been no legal challenges to these determinations, and EPA has not instituted withdrawal proceedings for any State corrective action program it has authorized. Thus, EPA has found in practice that the current regulations, supplemented by current and planned guidance, provide us an adequate foundation to authorize State programs, and that additional regulations are not necessary at this time.

Second, we are concerned additional regulations might disrupt State programs that are authorized to date. We recognize that new regulations, whether detailed substantive and procedural or performance standards, would, at least, raise the possibility of reanalysis of these authorized State programs. This would create unnecessary uncertainty in these programs that would very likely slow their progress. Similar concerns have been expressed by the States (*see* letter from Mark Gordon, Chair, ASTSWMO Corrective Action and Permitting Task Force to RCRA Docket #F–96–CA2P–FFFFF, July 30, 1996, located in the docket for this **Federal Register** notice). Given the limited added benefit of additional regulations, we do not believe the potential disruption to State programs is warranted.

Third, in addition to providing a basis for evaluating State programs, another objective in promulgating a comprehensive corrective action rule in 1990 was to establish national consistency in the corrective action program. We have become increasingly aware that corrective action sites differ in significant respects and that consistent application of rules and standards at all sites is not always appropriate. For areas of the program where consistency from site-to-site is generally important (*e.g.*, cleanup levels), we have been successful in using guidance and training to promote appropriate consistency. Thus, rather than issuing a rule to achieve consistency at all sites, we believe it would be more appropriate to develop guidance and training to promote consistency, where appropriate. Such guidance and training would apply not only within the corrective action program, but also with other cleanup programs as well (*see* memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA National Policy Managers entitled Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities, September 24, 1996).

Fourth and finally, promulgation of a corrective action rule is not necessary to ensure that affected parties have a chance to influence our corrective action decisions. The comments we received on the 1990 proposal and the 1996 ANPRM have informed this decision, as well as the content of Agency guidance and other initiatives undertaken (such as the training initiative discussed in footnote 3). Perhaps more important, however, is the fact that we provide RCRA owners and operators and the public with ample procedures to raise any objections (*e.g.*, through permit appeals) to each decision the Agency makes with respect to corrective action—whether it be the number of reports required of the facility, the area and materials that are subject to corrective action requirements, or the levels to which the facility must be cleaned.

For the reasons stated above, we have decided to withdraw all of the proposed rulemaking except for those provisions that already have been made final and those provisions relating to two jurisdictional issues—*i.e.*, the definition of ''facility'' for corrective action purposes, and provisions concerning corrective action responsibilities upon transfer of facility property. More specifically we preserve the discussions concerning these issues beginning at 55 FR 30808 (as supplemented by additional discussion and request for comment in the 1996 ANPRM beginning at 61 FR 19442 and 19460, and any other relevant discussions in either notice) and 55 FR 30845 and 30882 (as supplemented by additional discussion and request for comment in the 1996 ANPRM at 61 FR 19463, and any other relevant discussions in either notice). We have singled out these two

[2] For example, among the options considered by the Agency in the 1996 ANPR was a ''performance standards'' approach (*see* 61 FR 19432 at 19456). Under this approach, the Agency would craft a rule establishing performance standards or goals with very little detail concerning procedures.

jurisdictional issues because, unlike others discussed in the 1990 proposal (*e.g.*, definitions of release,[3] hazardous waste or hazardous constituents, and solid waste management unit), these are issues about which the Agency expressed concern regarding the status quo, or raised questions that have not been definitively addressed by the Agency. (*See e.g.*, 61 FR 19460—''EPA's definition of facility for purposes of corrective action has been problematic in some situations'' and 61 FR 19463—''The 1990 proposal identified two options: requiring the permittee to complete corrective action even on parcels sold to others, and requiring the purchaser of the parcel to complete the corrective action.'') We continue to believe that these issues should be addressed.

Over the years, EPA has published a number of major corrective action guidance documents and in 1990 proposed detailed corrective action regulations (*see* 55 FR 30798, July 27, 1990.) As discussed in the 1996 ANPRM, many of these documents, including the 1990 proposal, continue to provide useful information and guidance for corrective action implementation. However, the 1996 ANPRM updates our position on many of the issues discussed in the 1990 proposal, and should be considered the primary corrective action implementation guidance. In addition, we intend to provide any necessary additional guidance to assist program implementers. We believe that by focusing our resources on developing guidance and training,[4] rather than a final rule, we can provide sufficient guidelines for the areas of the program not governed by procedural regulations, but in a more flexible format.

It should be noted that nothing in this action modifies or affects those regulations promulgated to date to govern the corrective action program. It also should be noted that the Agency may, at some time in the future, decide that additional regulations would improve the corrective action program. Should the Agency decide to promulgate additional regulations on issues other than the jurisdictional issues described in this action, however, we would propose them in the **Federal Register** for public comment.

Dated: September 30, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–26070 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

[3] We believe it is important to emphasize in this action that we continue to adhere to the 1996 ANPRM interpretations of the term of ''release.'' In the 1996 ANPRM, we reiterated our longstanding position on the definition of ''release'' for corrective action (*see* 61 FR 19442). There, we cited language from the preamble of the 1985 HSWA codification rule (50 FR 28702, July 15, 1985) stating that the definition of ''release'' for corrective action should be at least as broad as the definition of release under CERCLA—thus, EPA interpreted the term ''release'' to mean ''any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.'' In the ANPR, we also cited language from the preamble of the 1990 proposal, stating that the definition of release also includes abandoned or discarded barrels, containers, and other closed receptacles containing hazardous wastes or constituents and that it could include releases that are permitted under other authorities, such as the Clean Water Act.

[4] Some commenters suggested that the inflexibility of some corrective action program implementers could be attributed, at least in part, to the failure of implementers to use available flexibility, rather than to limitations in the regulations and guidance issued by the Agency. To address these concerns, the Agency has launched an extensive training initiative, directed at EPA Regions and the States, which should address this concern. The training is designed to direct implementers to focus the corrective action program on obtaining key results, rather than adherence to an unnecessarily prescriptive process. The Agency believes that, by better focusing on results, implementers will be better able to prioritize investigation and remediation resources, and to utilize innovative methods to achieve protective results effectively, efficiently, and quickly.

Notices

Federal Register
Vol. 64, No. 194
Thursday, October 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Argicultural Research Service

Notice of Solicitation for Membership to the National Genetic Resources Advisory Council; Correction

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Agricultural Research Service published a document in the **Federal Register** of September 1, 1999, concerning solicitation for nominations to fill five vacancies on the National Genetic Resources Advisory Council. The deadline for nominations is extended.

FOR FURTHER INFORMATION CONTACT: Dr. Henry L. Shands, Director, National Genetic Resources Program, Stop Code 0305, Room 324–A, Jamie L. Whitten Federal Building, USDA, 1400 Independence Avenue SW, Washington, DC 20250–0305. Telephone 202–720–7545, Fax 202–690–1434.

Correction

In the **Federal Register** of September 1, 1999, in FR Doc. 99–22704, on page 47759, the date in the last sentence of the last paragraph has been extended to read:

Nominations should be sent to Henry L. Shands at the address listed above, and be post marked no later than October 29, 1999.

Dated: October 1, 1999

Henry L. Shands,

Assistant Administrator for Genetic Resources, USDA–ARS.

[FR Doc. 99–26133 Filed 10–06–99; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–047N]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, and the Food Safety and Inspection Service, United States Department of Agriculture; and the Food and Drug Administration, United States Department of Health and Human Services, are sponsoring two public meetings on October 12–13, 1999, and November 9, 1999, to provide information and receive public comments on issues that will be discussed at the Thirty-second Session of the Codex Committee on Food Hygiene, which will be held in Washington, DC, on November 29–December 4, 1999.

DATES: The first public meeting is scheduled for Tuesday and Wednesday, October 12–13, 1999, from 8:30 a.m. until 5 p.m. The second public meeting is scheduled for Tuesday, November 9, 1999, from 1 p.m. to 5 p.m.

ADDRESSES: The first public meeting will be held in Rooms 1409 and 1813, Federal Office Building 8, 200 C St. SW, Washington, DC, 20204. The second public meeting will be held in Room 1409, Federal Office Building 8, 200 C St. SW, Washington, DC, 20204. To receive copies of the documents listed in the notice contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex/ccfh32/FH99__01e.htm*. When submitting comments, send an original and two copies to the FSIS Docket Clerk and reference the Docket *# 99–047N* and the appropriate document number. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, telephone (202) 690–4042; Fax: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Patrick J. Clerkin, telephone (202) 690–4042; Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Food Hygiene Issues (CCFH) was established to draft basic provisions on food hygiene for all foods. The Government of United States of America hosts this committee and will chair the Thirty-second Session of the Codex Committee on Food Hygiene Issues.

Issues To Be Discussed at the Public Meeting

The purpose of the first meeting (October 12–13, 1999) is to provide information and receive public comments on all issues coming before the 32nd Session of the CCFH. Specific time periods during the two-day period will be designated to review each issue and will be announced on October 12. The purpose of the second meeting is to present and receive comment on draft United States positions on all issues coming before the 32nd Session of CCFH.

Below is a list of documents that address the issues the CCFH will discuss at the meetings. The issue documents marked with an asterisk are available in the FSIS docket Clerks

office (See **ADDRESSES**). The remaining documents will be available in the docket clerks office as soon as they are published.

1. Report by the Secretariat on Matters Referred by the Codex Alimentarius Commission and/or Other Codex Committees to the Food Hygiene Committee including the Report of the Joint FAO/WHO Expert Consultation on Risk Assessment of Microbiological Hazards in Foods (CX/FH 99/2).
2. Draft Code of Hygienic Practice for Bottled/Packed Drinking Waters (Other than Natural Mineral Waters), (CL 1999/9–FH). Government Comments—(CX/FH 99/3).
3. *Draft Code of Hygienic Practice for the Transport of Foodstuffs in Bulk and Semi-Packed Foodstuffs (CX/FH 99/4). Government Comments—(CX/FH 99/4–Add. 1).
4. *Proposed Draft Code of Hygienic Practice for Milk and Milk Products (CX/FH 99/5). Government Comments—(CX/FH 99/5–Add. 1).
5. *Proposed Draft Code of Hygienic Practice for the Primary Production, Harvesting and Packaging of Fresh Fruits and Vegetables (CX/FH 99/6). Government Comments—(CX/FH 99/6–Add. 1).
6. *Proposed Draft Code of Hygienic Practice for Pre-Cut Fruits and Vegetables at Step 4 (CX/FH 99/7). Government Comments—(CX/FH 99/7–Add. 1).
7. *Proposed Draft Principles and Guidelines for the Conduct of Microbiological Risk Management (CX/FH 99/8). Government Comments—(CX/FH 99/8–Add. 1).
8. Discussion Paper on HACCP in Less Developed Businesses (CX/FH 99/9).
9. *Discussion Paper on Proposed Draft Recommendations for the Control of Listeria monocytogenes in Foods in International Trade (CX/FH 99/10).
10. Discussion Paper on Viruses in Foods (CX/FH 99/11).
11. Discussion Paper on Antibiotic Resistance in Food (CX/FH 99/12).
12. Discussion Paper on Proposed Draft Guidelines for the Hygienic Reuse of Processing Water in Food Plants (CX/FH 99/13).
13. *Priorities for the Revision of Codes of Hygienic Practice (CX/FH 99/14).

Additional Public Notification

Pursuant to Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 22, 1993, FSIS has considered the potential civil rights impact of this public meeting on minorities, women, and persons with disabilities. FSIS anticipates that this public meeting will not have a negative or disproportionate impact on minorities, women, or persons with disabilities. However, public meetings generally are designed to provide information and receive public comments on substantive issues which may lead to new or revised agency regulations or instructions. Public involvement in all segments of rulemaking and policy development are important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this public meeting and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC, on October 1, 1999.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 99–26124 Filed 10–6–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of the Land and Resource Management Plan for the Medicine Bow National Forest, Albany County, Carbon County, Converse County, Natrona County, Platte County, WY

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plan for the Medicine Bow National Forest.

SUMMARY: The Forest Service will prepare an environmental impact statement in conjunction with the revision of its Land and Resource Management Plan (hereafter referred to as Forest Plan or Plan) for the Medicine Bow National Forest. This notice describes the proposed action, specific portions of the current Forest plan to be revised, environmental issues considered in the revision, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: The public is asked to provide comments identifying and considering issues, concerns, and the scope of analysis with regard to the proposed action, in writing by November 15, 1999. The Forest Service expects to file a Draft Environmental Impact Statement with the Environmental Protection Agency (EPA) and make it available for public comment in October of 2000. The Forest Service expects to file a Final Environmental Impact Statement in December of 2001.

ADDRESSES: Send written comments to: Jerry E. Schmidt, Forest Supervisor, Medicine Bow-Routt National Forest, 2468 Jackson Street, Laramie, Wyoming 82070.

FOR FURTHER INFORMATION, CONTACT: Dee Hines, Forest Planner, (307) 745–2473.

RESPONSIBLE OFFICIAL: Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for the revision of the Land and Resource Management Plan (hereafter referred to as Forest Plan or Plan—for the Medicine Bow National Forest. According to 36 CFR 219.10(g), land and resource management plans are ordinarily revised on a 10 to 15 year cycle. The existing Forest Plan was approved on November 20, 1985.

The Forest Service is the lead agency in this revision effort. The state of Wyoming, by and through the Office of Federal Land Policy, is a Cooperating Agency (40 CFR 1501.6) by virtue of special expertise. The Rocky Mountain Regional Forester is the Deciding Officer and Responsible Official.

Forest plans describe the intended management of National Forests. Agency decisions in these plans do the following:

1. Establish multiple-use goals and objectives (36 CFR 219.11 (b)).

2. Establish forestwide management standards and guidelines applying to future activities (resource integration requirements, 36 CFR 219.13 to 219.27).

3. Establish management areas and management area direction (management area prescriptions)

applying to future activities in that management area (resource integration and minimum specific management requirements) 36 CFR 219.11(c).

4. Establish monitoring and evaluation requirements (36 CFR 219.11(d)).

5. Determine suitability and potential capability of lands for resource production. This includes designation of suitable timber land and establishment of allowable timber sale quantity (36 CFR 219.14 through 219.26).

6. Where applicable, recommend designations of special areas such as Wilderness (36 CFR 219.17) and Wild and Scenic Rivers (The Wild and Scenic Rivers Act) to Congress.

Need for Change in the Current Forest Plan

The existing Forest Plan was approved in 1985. In addition to the regulatory requirement to revise Forest Plans every 10 to 15 years, our experience in implementing the plan and monitoring the effects of that implementation indicates that we need to make some changes in management direction. Several other sources have also highlighted the need for changes in the current Forest Plan. These sources include the following:

- Public involvement which has identified new information and public values.
- Monitoring and scientific research which have identified new information and knowledge gained.
- Forest plan implementation which has identified management concerns to find better ways for accomplishing desired conditions.

Many concerns about management direction in the current plan result from a lack of integration of the various resources areas in the plan. An ecosystems-based approach to strategic planning, also called ecosystem management, offers an opportunity to address and achieve this needed integration. Ecosystem management is the management of natural resources to maintain or restore the sustainability of ecosystems, thereby providing multiple benefits to present and future generations. It recognizes the biological, physical, and human dimension of ecosystems.

Since the Medicine Bow Plan was approved in 1985, the Forest Service has adopted a new agenda. This new approach, A National Resource Agenda for the 21st Century, will be the foundation for national forest management into the 21st century. There are four key areas in the new agenda:

1. Watershed health and restoration.
2. Sustainable forest ecosystem management.
3. Forest roads.
4. Recreation.

Other developments include the Government Performance and Results Act (GPRA) which was passed in 1993. This act directs the preparation of periodic strategic plans by federal agencies. The first strategic plan for the Forest Service was written in 1997 and centers around the following three goals:

1. Ensure sustainable ecosystems.
2. Provide multiple benefits for people within the capabilities of ecosystems.
3. Ensure organizational effectiveness.

Ecosystem management, the Natural Resource Agenda for the 21st Century, and the GPRA Strategic Plan each concentrate and focus on outcomes and desired resource conditions, the results of management. These changes need to be incorporated into the Forest Plan.

Prepearing the Plan and EIS

An interdisciplinary team is conducting the environmental analysis and preparing an environmental impact statement associated with revision of the Forest Plan. This interdisciplinary team will also prepare the revised Forest Plan. As part of this effort, the interdisciplinary team has already developed a list of forestwide standards and guidelines; identified 32 management areas; and developed the corresponding management area themes, settings, desired condition statements, and management area-specific standards and guidelines. These will be used to develop alternatives to the proposed action for the revised Forest Plan. This material is available at the Medicine Bow National Forest headquarters.

Proposed Action

The revised Land and Resource Management Plan for the Medicine Bow National Forest will be built on principles of ecosystem management. This integrated approach will address many of the questions about and concerns with the 1985 Plan. The revised Forest Plan and associated analysis will also respond to the four points in the new Forest Service agenda, a Natural Resource Agenda for the 21st Century. In addition, the goals of the GPRA Strategic Plan will be featured in the revised plan. Accordingly, the revised Forest Plan will concentrate on desired conditions of the resource and the outcomes of management actions.

The Revised Forest Plan will include a monitoring strategy to measure how effectively the Plan meets stated goals and objectives. In keeping with the Natural Resource Agenda, this strategy will focus on outcomes and desired resource conditions rather than outputs.

Major Revision Topics

We identified the following six revision topics through annual Forest Plan monitoring reports, review of regulations, internal Forest Service discussions, and discussions with the public through a series of open houses in communities adjacent to the National Forest:

- Biological Diversity.
- Timber Suitability and Management of Forested Lands.
- Recreation Opportunities.
- Roadless Area Allocation and Management.
- Wild and Scenic Rivers.
- Oil and Gas Leasing.

The following sections discuss the current management direction, the need for change, and a proposed action for each of the revision topics.

Biological Diversity

Current Direction

Direction in the current Plan is intended to produce a diversity of habitats well-distributed throughout the landscape. This approach to managing biological diversity produces a very heterogeneous landscape at a fine scale. Patches are small, with a high percentage of edge habitat. Patches are areas where the vegetation is similar in species, age, and size. Natural disturbance processes are generally controlled or suppressed. All habitats, including late successional forests are well-distributed but generally in small patches. The current plan contains one Research Natural Area and 6 Special Interest Areas which feature biological diversity-related features.

Need for Change

Public interest in biological diversity and how best to maintain it has grown substantially since the current Forest Plan was approved in 1985. Biological diversity or various aspects of it (such as threatened, endangered, and sensitive species management or forest health) have been issues in environmental analyses in recent years. The current plan's emphasis on heterogeneous habitats and exclusion of natural disturbance events has caused concerns about sustainability of the forested ecosystems.

Direction in the current plan does not fully reflect the latest scientific information on land management planning. This new information needs

to be incorporated into the revised plan, particularly the principles of ecosystem management, with attention given to managing the system as a whole.

Proposed Action

The proposed action is to increase the acreage where natural disturbance events (fire, insects and disease) are tolerated, increase the size of patches on the landscape, and provide increased acreage and larger blocks in late successional habitats. These goals would be accomplished through several methods, including the following:

- Allocating inventoried roadless areas to prescriptions with an emphasis on late successional forests and natural disturbance processes.
- Extending rotation ages and emulating natural landscape patch size in many areas where timber harvest is allowed.

The use of fire as a management tool would also be increased, especially in ecosystems with a short or moderate fire return interval. In addition, the proposed action includes 5, and potentially 6 additional Research Natural Areas (the current plan has 1). The current plan has 6 Special Interest Areas (SIAs); the proposed action adds 11. There would be changes to two of the current SIAs. One would be renamed and would increase in size; one would become an RNA. Many of the resulting 16 proposed SIA's would also feature biological diversity goals.

Timber Suitability and Management of Forested Lands

Current Direction

The current Forest Plan allocates approximately two-thirds of the tentatively suited lands in 7 management area prescriptions to timber management. Timber management is practiced across these 7 management areas, with differing management emphases and intentions.

Need for Change

The following indicate a need for change in the management of forested lands:

- Projected harvest levels in the current plan are not being achieved.
- There is concern over what constitutes sustainable harvest levels.
- Reevaluation of the tentatively suited lands is required at 10 years (36 CFR 219.12(k)(5)(ii)).
- Allocation of existing roadless areas to timber management prescriptions continues to be very controversial.
- Silvicultural prescriptions specified in various management areas are in conflict with other multiple use management activities in those areas.
- Current forest conditions indicate treatments for products other than sawlogs are needed.

Proposed Action

Under the proposed action, timber harvest would continue in areas with an existing network of roads and past timber management activities. Timber management would not take place in areas where trees were not harvested in the past. Forest management actions would stress sustainable forest ecosystems and healthy watersheds. Timber stands would be managed as vigorous green forests. These forest health goals would be achieved through a variety of even- and uneven-aged silvicultural practices, including an emphasis on products other than sawlogs. Management intensity would vary across those lands allocated to timber production through a mix of silvicultural prescriptions and rotation ages.

Recreation Opportunities

Current Direction

The current plan emphasizes roaded natural recreation opportunities which are accommodated by an extensive road system. Following project implementation, many roads have been closed but not obliterated to allow their use in future management activities. These road closures, combined with the Forest's off-road policy, have facilitated a new road system created by users.

Under the current plan, there was an increase in semi-primitive ROS class opportunities. A key concern is the sporadic distribution of these opportunities which precludes true semi-primitive experiences.

Need for Change

Recreation opportunities have not kept pace with increasingly diverse demands, and these demands are expected to increase as the population increases. Recreation-related controversy (*i.e.*, conflicts between recreationists and management activities, conflicts between recreation users) have increased over the last 15 years. In many cases, management actions in the current Forest Plan are in conflict with the recreation objectives for a given management area.

Motorized use has changed since the current plan was signed. In particular, there is more off-highway vehicle use on the Forest, creating a need to re-evaluate current travel management policies. Rather than imposing blanket restrictions, motorized uses and their distribution need to be addressed through management area allocations.

Proposed Action

Under the proposed action, recreation opportunities would accommodate new and diverse demands. This would be achieved by the following:

- Increasing the amount of semi-primitive ROS classes.
- Connecting semi-primitive areas by way of new and existing roads and trails.
- Increasing and improving dispersed recreation opportunities using existing roads and trails and those developed for other management actions.
- Improving the settings in and around current facilities and providing opportunities and readily available amenities from these sites.

The proposed action would maintain current dispersed recreation opportunities, and include consideration for these opportunities in future management activities. It would also include specific management area allocations for both motorized and nonmotorized activities. In addition, the proposed action would include direction to improve public access.

The proposed action would not include additional developed facilities, rather the focus would be on improvements and bringing current facilities up to standard. Renovation of current facilities would focus on accessibility, improving setting amenities and other recreation opportunities, and providing areas for larger recreational vehicles.

Roadless Area Allocation and Management

Current Direction

The President signed the Wyoming Wilderness Act of 1984 (PL 98–550) which designated three new wilderness areas on the Medicine Bow National Forest, in addition to the existing Savage Run Wilderness (14,930 acres). Areas designated by the 1984 Act include the Platte River Wilderness (22,749 acres), the Encampment River Wilderness (10,124 acres), and the Huston Park Wilderness (30,726 acres). The Act also released all remaining areas (those areas not designated as wilderness by the Act) to multiple-use management. The current plan allocates many of these remaining roadless areas to prescriptions which allow road building.

Need for Change

Inventory of roadless areas is a requirement in the revision process (36 CFR 219.17). Management of inventoried roadless areas continues to be controversial. These conflicts are a

result of varying resource demands on the roadless areas.

Proposed Action

The proposed action is to complete an inventory of roadless areas, evaluate these areas to determine wilderness potential (36 CFR 219.17), and allocate most of the roadless areas to varying management area prescriptions which retain the roadless character. Exceptions might be made on the Laramie Peak unit where ecosystem health goals may require more active management with limited road building.

Wild and Scenic Rivers

Proposed Action

In the current plan, there is no management area used specifically for Wild and Scenic Rivers. Designation of the North Platte and Encampment Rivers was recommended to Congress. Congress has not acted to officially designate either river, however they remain under the wilderness prescription, and their unique qualities are safeguarded by the wilderness standards and guidelines.

Need for Change

The Wild and Scenic Rivers Act, as amended (December 31, 1992) and Forest Service Handbook 1909.12, Chapter 8, direct the Forest Service to evaluate rivers for inclusion in the National Wild and Scenic River System during forest planning. Proposed designation of two eligible rivers, the North Platte and the Encampment, has not been acted on by Congress. These two rivers, as well as other rivers on the forest, need to be evaluated to determine their eligibility for inclusion in the Wild and Scenic River System.

Proposed Action

The proposed action is to allocate all eligible rivers to wild and scenic river prescriptions accordingly. Two rivers, the North Platte and the Encampment, qualified for inclusion in the wild and scenic rivers program and would be protected under wild and scenic management prescriptions until a suitability determination is made. Both rivers have stretches that would qualify under the wild river prescription as well as scenic river prescription. Suitability determinations would be made with future site-specific analysis when the need arises.

Oil and Gas Leasing

Current Direction

In the current plan, most of the analysis area is available for leasing, but no lands are authorized for leasing. Current Forest Plan standards and guidelines are followed, and leases would be issued on a lease by lease basis.

Need for Change

In 1987, Congress passed the Federal Onshore Oil and Gas Leasing Reform Act (Leasing Reform Act). The Leasing Reform Act requires analysis that was not conducted for the 1985 Forest Plan.

Proposed Action

The proposed action is to make most land available for leasing with specified stipulations. Stipulations would vary according to resource needs and the desired conditions of associated management areas.

Involving the Public

The Regional Forester gives notice that the Forest is beginning an environmental analysis and decision making process for this proposed action. We encourage any interested or affected people to participate in the analysis and contribute to the final decision.

We will provide opportunities for open public discussion of the proposed action including changes to the revision topics. We encourage the public to comment on this specific proposal. Focusing on the proposal will generate specific scoping comments on the revision topics and decisions to be made, and make the revision process more effective. The Analysis of the Management Situation contains baseline information, including the 32 management areas and the No Action Alternative, to help evaluate how the proposed action and the alternatives address the revision topics and the six decisions (listed previously) made in forest plan revisions. This information will be available in late 1999.

We will develop a broad range of alternatives (including the No Action Alternative) to the proposed action based on the comment received and on further analysis. Accordingly, we expect the alternative considered and the final decision to vary from what is put forth in the proposed action.

Public participation is invited throughout the revision process and will be especially important at several points during the process. We will make information available through periodic newsletters, news releases, the Internet (http://www.fs.fed.us/mrnf/rev/medrev/medrev.htm), and various public meetings. The first public meetings will be held after the Analysis of the Management Situation is completed in late 1999. Meeting dates will be well published through the media mentioned above.

Cooperative Agencies

The state of Wyoming, by and through the Office of Federal Land Policy, is a Cooperating Agency (40 CFR 1501.6) by virtue of special expertise in the areas of social assessment, public participation, and wildlife management.

Release and Review of the EIS

The Draft Environmental Impact Statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment in October of 2000. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention; *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1335, 1338 (E.D. Wis. 1980). Because of these court rulings; it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also, helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded by the Forest Service in preparing the Final EIS. The FEIS, is scheduled to be completed in December of 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding the revision. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised Plan. The decision will be subject to appeal in accordance with 36 CFR Part 217.

Dated: September 23, 1999.

Tom L. Thompson,

Acting Regional Forester, Rocky Mountain Region.

[FR Doc. 99–26175 Filed 10–6–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan, Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands, Headquartered in Pueblo, CO

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an Environmental Impact Statement in conjunction with revision of the Land and Resource Management Plan for the Pike and San Isabel National Forests, and the Comanche and Cimarron National Grasslands (PSICC), located in Clear Creek, Douglas, Jefferson, EL Paso, Teller, Park, Summit, Lake, Chafee, Saguache, Fremont, Custer, Heurfano, Costilla, Pueblo, Las Animas, Otero, and Baca counties in Colorado, and Morton and Stevens counties in Kansas.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement in conjunction with the revision of its Land and Resource Management Plan (hereafter referred to as the Plan) for the Pike and San Isabel National Forests, and the Comanche and Cimarron National Grasslands, (hereafter referred to as PSICC).

This notice describes the proposed action, specific portions of the current Plan to be revised, environmental issues considered in the revision, estimated dates for filing the Environmental Impact Statement (EIS), information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: The Public is asked to provide comments identifying and considering issues, concerns, and the scope of the analysis with regard to the proposed action, in writing by January 31, 2000. The Forest Service proposes to file a Draft Environmental Impact Statement (DEIS) with the Environmental Protection Agency (EPA) and make it available for public comment in the spring of 2001. The Forest Service proposes to file a Final Plan and EIS that will be available in the fall of 2002.

FOR FURTHER INFORMATION CONTACT: John Hill, Planning Staff Officer, (719) 545–8737. Please send written comments on this Notice of Intent to: Donnie R. Sparks, Acting Forest Supervisor, PSICC, 1920 Valley Drive, Pueblo, CO 81008–1797.

RESPONSIBLE OFFICIAL: Lyle Laverty, Rocky Mountain Regional Forester at P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. According to 36 CFR 216.10(g), land and resource management plans are ordinarily revised on a 10 to 15 year cycle. The existing Forest Plan was approved on September, 1984. This Plan has been amended 25 times including two major amendments related to the December 1991 Oil and Gas Environmental Impact Statement (EIS) and the 1993 Colorado Wilderness bill.

The Regional Forester gives notice that the Forest is beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision.

Opportunities will be provided to discuss the Forest Plan revision process openly with the public. The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement. Forest Service officials will lead these discussions, helping to describe issues and the preliminary alternatives. These officials will also explain the environmental analysis process and the disclosures of that analysis, which will be available for public review. Written comments identifying issues for analysis and the range of alternatives are encouraged to be submitted to PSICC by January 21, 2000. A regular schedule of public meetings will be in the summer of 2000. Alternative development meetings will be held in winter of 2000. Public notice of dates, times, and locations for specific meetings will be provided in local newspapers and posted on the Forest's web site: http://www.fs.fed.us/r2/psicc. Additionally, we will send notices and newsletters to those on the forest plan revision mailing list. Requests to be placed on this mailing list should be sent to the comment address stated above.

Two Plans will be written in accordance with National direction from Mike Dombeck, Chief of the Forest Service. One will describe the intended management of the Pike and San Isabel National Forests; the other will describe the intended management of the Comanche and Cimarron National Grasslands.

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. As part of the overall effort to uphold the federal trust responsibilities to tribal sovereign nations to the extent applicable to National Forest System lands, the Forest Service will establish regular and meaningful consultation and collaboration with the tribal nations on a government-to-government basis. the Forest Service will work with governments to address issues concerning Indian tribal self-government and sovereignty, natural and cultural resources held in trust, Indian tribal treaty and Executive order rights, and any issues that significantly or uniquely affect their communities.

Forest Plans make six fundamental decisions.[1] These decisions are:

1. Establishment of forest-wide multiple-use goals and objectives, (36 CFR 219.11(b)).

2. Establishment of forestwide management requirements (standards and guidelines) to fulfill the requirements of the NFMA relating to future activities (resource integration requirements of 36 CFR 219.13 to 219.27).

3. Establishing of management area direction (management area prescriptions) applying to future management activities in that management area (36 CFR 219.11).

4. Designation of land suitable for timber production and the establishment of allowable timber sale quality (36 CFR 219.14 and 219.16).

5. Nonwilderness multiple-use allocations for those roadless areas that were reviewed under 36 CFR 219.17 and

[1] *Citizens for Environmental Quality* v. *U.S.* 731 F. Supp. 977 (D.Colo. 1989).

not recommended for wilderness designation.

6. Monitoring and evaluation requirements (36 CFR 219.11(d)).

The authorization of project-level activities on PSICC occurs through project decision-making, which is the second stage of land management planning, called Plan implementation. Project planning and decision making is an on-going process that occurs on all eight Ranger Districts and Supervisor's office before, during and after Plan revision. Project level decisions must also comply with National Environmental Policy Act (NEPA) procedures and must include a determination that the project is consistent with the Plan. The current Plan remains in effect and must be complied with until the revised Plan is completed and approved.

Synopsis on the Current Plan

The current Plan emerged from a zero-based planning process that considered alternative management emphases within an overall context of multiple use. The planning process recognized the concept of biodiversity and incorporated various aspects of it into the Plan. The selected alternative—and the basis for management of PSICC's lands in ensuring years—established PSICC as a unit where recreation and wildlife (including TES species) play a key role, while production of commodities such a timber is maintained at moderate levels. PSICC's proximity is growing metropolitan area accounts for the recreation component, while the unit's vast geographic reach spans a wide range of ecosystems and habitats and accounts for the wildlife component.

The current Plan adopted a mid-range level of timber harvest and projected that activities thereunder would play a central role in addressing the needs of wildlife habitat, forest health, and fuels accumulation. Soon after the Plan was approved, however, structural changes occurred affecting both the local timber industry and the regulatory environment for conducting timber harvest. The result was a PSICC timber harvest program that performed at much lower levels than projected during the planning process.

Framework for Future Planning

Since the current Plan was approved in 1984, the biodiversity concept it embraced has evolved somewhat into an approach that seeks better recognition and integration of ecosystem components. Ecosystems management and sustainability have replaced multiple use and sustained yield. As a reflection of this, the Forest Service has adopted a Natural Resource Agenda for the 21st Century, which will be the foundation for future National Forest management and includes ecosystem sustainability. The agenda has four key areas:

1. Watershed health and restoration.
2. Sustainable forest ecosystem management.
3. Forest roads.
4. Recreation.

Other developments include the Government Performance and Results Act (GPRA) which was passed in 1993. This act directs the preparation of periodic strategic plans by federal agencies. The first strategic plan for the Forest Service was written in 1997 and centers around the following three goals:

1. Ensure sustainable ecosystems.
2. Provide multiple benefits for people within the capabilities of ecosystems.
3. Ensure organizational effectiveness.

Ecosystem management, the Natural Resource Agenda for the 21st Century, and the GPRA Strategic Plan focus on outcomes and desired resource conditions rather than outputs of goods and services. These need to be incorporated into the revised Forest Plan.

Need for Changes in the Current Plan

In addition to the regulatory requirement to revise Forest Plans every 10 to 15 years and the new framework for future planning described above, PSICC's experience in implementing the current plan and monitoring its effects shows a need for certain changes. Several other sources have also highlighted the need for changes in the current Plan. These sources include the following:

1. Public involvement, for individual projects and amendments to the Plan, which has identified new information, public values and an indication of the Plan's overall palatability.
2. Monitoring and scientific research which has provided a better understanding of ecosystems structure, function and health.
3. Forest plan implementation which has identified management concerns to find better ways for accomplishing desired conditions.
4. Technology improvements allowing better data collection and analysis.

Proposed Action

Based on these sources of information, various aspects of the Plan have been identified as possibly needing change. These aspects range from the broad to the specific. The key broad aspect to be examined regards whether the current Plan adequately addresses the relationship between the impacts of recreation uses and the habitat needs of threatened, endangered and sensitive species. Since the current Plan was approved, changes have occurred both in specie lists in these categories and in ways of thinking about habitats in terms of ecosystem management and sustainability. In addition, recreation patterns have changed: more people are visiting and their means of enjoyment have evolved. A look needs to be taken at the interaction of recreation patterns and habitat needs to determine whether and how the current Plan might be changed to maintain a fair balance between these distinctly different uses of National Forest.

A variety of more specific changes also appear to be in order. Additional wildernesses have been designated, but management area direction for them has not been cleanly incorporated into the Plan. In addition, many standards and guidelines redundantly state direction found in law, regulation and policy that must be followed in any case; these are to be removed. Other standards and guidelines may be revised to reflect improved scientific or regulatory understanding. Further, the current Plan's labeling of management areas will be changed to reflect a scheme adopted by several Forest Service Regions to achieve better consistency of terms among Plans.

Overall, the types of changes to be considered are seen as being largely fine-tuning in nature. That is, public response and agency experience under the current Plan do not appear to be demanding a repeat of the zero-based planning process such as was conducted while developing the current plan. Those aspects of the current Plan that have proven to be good policy do not need to be changed. Accordingly, the revision process is expected to concentrate on improving the current Plan rather than exploring entirely different ways of managing PSICC's lands. Among other things this approach will better focus on the interests of PSICC's users while keeping planning costs within the unit's financial means.

Major Revision Issues

Based on the experience and information sources identified above, revision is being initiated to meet legal requirements, and to address all needed changes in the Plan. In order to focus and streamline revision efforts, two *major* issues have been identified. These two major issues will require major changes in Plan, and their inter-

relationship will be the primary drivers of the analysis and the range of alternatives in the revision process. Both issues are complex; together they affect every acre of land and every resource program on the PSICC.

1. Biodiversity and Ecological Sustainability

Planning Questions

- How will the PSICC Plan be changed to maintain or improve biological diversity (biodiversity) and provide sufficient habitat for the long-term viability for populations of focal species, especially for Threatened, Endangered, and Sensitive (TES) Species?
- How will recreation and natural resource management program direction on the PSICC need to change to ensure healthy sustainable ecosystems?

Background

Biological diversity (biodiversity) is the full variety of life in an area including the ecosystems, plant and animal communities, species and genes, and the processes through which organisms interact with one another and their environment. Humans and human activity are integral parts of ecosystems and will be considered in the analysis. On the PSICC, biodiversity may have been reduced from its 1984 level because of increased human activity and the suppression of fires.

The current Plan partially addresses the concept of biodiversity. In revision, biodiversity concepts will be used for revising management strategies for the physical, biological and social environment. An integrated analysis will incorporate the best currently available information and technology, and will include information from any range of natural variability assessments prepared for the Region. The Forest Service believes biodiversity could decrease under continued implementation of the existing PSICC Plan. The revision will review specific methods for management of biodiversity and provide for monitoring of management actions to measure progress and ensure ecological sustainability through adaptive management.

Of significant concern to the Forest Service is the biological condition of forest and rangeland vegetation. The Forest Service believes it will be necessary to use prescribed fire and some timber harvest to begin to restore a healthy vegetation condition. Others believe the best way to restore this condition is to minimize human intervention and to allow natural processes to restore diversity. These options will be weighed during the revision process.

Related topics include:

- How to restore fire to the ecosystem and engage in vegetation treatment in the urban/wildland interface;
- How to maintain sustainable rangeland health and protect TES species with a balance between domestic grazing and wildlife use;
- How can cost-effective levels of grazing be maintained so ranching can continue to be an element in local community character;
- How to maintain critical wildlife habitat and viable populations of important species on public lands; and
- How to maintain water and air quality while continuing multiple-use management.

2. Roadless Area Management

Planning Questions

- Which roadless areas on the PSICC qualify for Wilderness and should be recommended for designation to the National Wilderness system?
- How should roadless and unroaded areas not recommended for Wilderness be managed to meet current and expected demands for motorized and non-motorized recreation, and other resource management access needs?

Background

The Forest Service is required (36 CFR 219.17) to evaluate all roadless areas for potential Wilderness designation during the revision process. This process will produce an inventory of roadless areas meeting minimum criteria for Wilderness according to the 1964 Wilderness Act. Wilderness designation is a Congressional responsibility, so the Forest Service will only make recommendations.

The PSICC has significant amounts of land which are roadless or unroaded (containing no ''classified'' or system roads), because of the steep terrain in many areas. All of the unroaded areas on the PSICC (except designated Wilderness areas) will be inventoried for roadless area potential. There has been relatively little development and moderate evidence of human use in roadless areas on the PSICC since 1984. Recommendations for Wilderness designation will be made for those inventoried areas which meet the criteria and which the Regional Forester believes should be added to the National Wilderness System.

The management of roadless and unroaded areas not recommended for Wilderness will be reviewed during the revision process. Both motorized and non-motorized recreationists want to maintain or improve their access and travel opportunities on the PSICC. Some of the roadless and unroaded areas are currently managed for summer and/or winter motorized trail or area use. Traditional forms of recreation such as driving for pleasure, hiking, horseback riding, and snowmobiling are showing steady increases. Mountain biking, cross-country skiing, all-terrain vehicle use, rafting, and kayaking have grown dramatically in the past decade.

The PSICC is one of the top units in the nation for recreation opportunities and use, with over 3 million people living within an hour of the national forests and grasslands. Because of the high levels of current and historic recreation and other use, the PSICC has been implementing travel management for the past 20+ years. Travel management is the movement of people, goods, and services to and through the Forest. Travel management is an on-going process, and there is always more to be done to improve it. Most of the PSICC is currently under management that shows on maps and on the ground where people and vehicles can and can not go. All of the Pike and San Isabel National Forest lands require that wheeled vehicles stay on designated roads and trails, with no off road or off trail travel except for snowmobiles operating over snow. The Comanche and Cimarron Grasslands expect to complete their travel management to the same quality standard by about 2001. This will be accomplished through District project planning, not through Plan revision.

Recreation on the PSICC has a significant economic impact locally and in the state of Colorado. Concerns exist about the effects of high recreation use on the physical and biological environment. Rapidly increasing summer and winter recreation is creating a need to address the separation of motorized and non-motorized users in some areas. Changes needed in Plan revision will include the refinement of area allocations with respect to whether motorized or non-motorized uses are allowed. There is a need to review existing direction to determine how the demand for a wider variety of uses and more separation of uses can be met within resource capacity limits.

Other Revision Topics

Planning regulations and fifteen years of PSICC Plan implementation experience were used to identify the following list of additional topics that will be addressed and updated during revision.

Special Area Management

The PSICC includes many unique and outstanding combinations of physical and biological resources, and areas of social interest. These are collectively referred to in the regulations as ''special areas.'' Special areas may include Wilderness (36 CFR 219.17); Wild and Scenic Rivers (36 CFR 219.2); Research Natural Areas (36 CFR 219.25); National Trails, and special recreational areas with scenic, historical (36 CFR 219.24), geological, botanical, zoological, paleontological, archaeological, or other special characteristics. Management direction for all special areas will be updated, based on the uniqueness of the special area and the difference between existing and desired future condition of the resource(s).

Research Natural Area (RNA) Recommendations

Currently the PSICC has 3 RNAs. In the past few years twenty new potential RNAs have been identified on the Pike and San Isabel NFs and eight new potential area on the Comanche & Cimarron NGs. These potential RNAs range in size from a few hundred to a few thousand acres. Based on the diversity of the PSICC, the Forest Service has recognized that additional ecosystems need to be analyzed and recommended for designation as Research Natural Areas.

Wild & Scenic Rivers Eligibility Recommendations

The Wild and Scenic Rivers Act of October 1, 1968, as amended, requires the consideration of potential Wild and Scenic Rivers. As part of Plan revision, rivers and streams, determined potentially eligible for inclusion in the wild and Scenic River System, will be analyzed to determine if the ''eligible'' status is warranted. There is at least one, possibly two, other river segments on the State of Colorado's National Rivers Inventory that may also be within PSICC jurisdiction.

(1) Segments of the Purgatoire River in Otero County, definitely on PSICC lands.

(2) Chacuaco Canyon in Las Animas County. This may not be on the PSICC at all.

Eligibility studies for this (these) river segment(s) will be part of the PSICC Forest Plan revision process. The next step in the process for eligible rivers and streams is suitability analysis. This step will be deferred to a future date.

Timber Suitable Acres and Allowable Sale Quantity

The Forest Service is required (36 CFR 219.14) to determine which lands are suited and not suited for timber production. This allows an estimate to be made of the potential of the unit to produce a continuous supply of timber. Preliminary analysis shows that the acres of tentatively suitable timber lands on the unit will be significantly less than those identified in the current plan. Alternative levels of commercial timber harvest will be identified in the EIS.

Similarly the suitability, condition, and trend of the Range resource (36 CFR 219.20) will be analyzed and expected levels of grazing will be estimated for Plan Revision Alternatives.

Other Potential Changes to the Current Plan

The Rocky Mountain Region (R2) has developed a set of Management Area prescriptions to promote greater uniformity of direction across adjacent National Forests in the Region. The PSICC will use the R2 Management Area numbering system and use the standard R2 Management Area direction as much as possible. The Revision will incorporate the basic direction and recommendations of the 1995 Recreation Capacity Assessment and Outfitter Guide Allocations and the 1991 Recreation Strategy for the PSICC. The revision will incorporate the Noxious Weed Environmental Assessment recommendations. Plan Revision will decide to retain or close vacant grazing allotments. The Revision will update Goals, Objectives, Standards and Guidelines to meet new national, regional and PSICC priorities.

What To Do With This Information

Writen comments on the scope of the issues, topics, and other potential changes identified above are encouraged to be submitted to PSICC by January 31, 2000.

Framework for Alternatives To Be Considered

A range of alternatives will be considered when revising the Plan. The alternatives will address different options to resolve the major issues and other revision topics listed above, and to fulfill the purpose and need for plan revision. A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study. A ''no-action alternative'' is required. For Plan revision, no action means that current management would continue under the existing Plan. In describing alternatives, desired vegetation and resource conditions will be defined. Resource outputs will be estimated based upon achieving desired conditions. Some preliminary information is available; however, additional public involvement and collaboration will be needed for alternative development.

Involving the Public

PSICC's primary objective is to maintain an atmosphere of openness throughout the Plan revision process, where all members of the public feel free to share information with the Forest Service on a regular basis. All planning activities will be designed to support open discussions and public involvement that will be sustained on the PSICC after revision is completed.

The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who may be interested in or affected by Plan revision (36 CFR 219.6) and implementation. ''Collaborative stewardship,'' is defined as caring for the land and serving the people by listening to all constituents and living within the limits of the land, and will be implemented on the PSICC. Many agencies, organizations and individuals have already been cooperating in the development of assessments of current biological, physical, social and economic conditions. This information will be used to prepare the Draft Environmental Impact Statement (DEIS).

Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice. Public participation activities could include (but are not limited to) requests for written comments, open houses, focus groups, field trips, and collaborative forums in numerous locations. Public participation will be sought throughout the revision process and will be especially important at several points along the way. The first formal opportunity to comment is to respond to this notice of intent, which initiates the scoping process (40 CFR 1501.7). Scoping includes: (1) identifying potential issues, (2) from these, identifying significant issues of those that have been covered by prior environmental review, (3) exploring alternatives in addition to No Action, and (4) identifying potential environmental effects of the proposed action and alternatives. Additional Public Involvement activities are tentatively proposed to start in the summer of 2000, and will be held at several locations throughout the PSICC area.

Release and Review of the EIS

The Draft EIS (DEIS) is proposed to be filed with the Environmental protection Agency (EPA) and to be available for public comment in the spring of 2001. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The comment period on the DEIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 533 (1978). Also environmental objections that could be raised at the DEIS stage but are not raised until after completion of the Final Environmental Impact Statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the three-month comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed actions, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. Reviewers may wish to refer to the Council on Environmental Quality Regulation for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the DEIS, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS (FEIS). The FEIS is proposed to be completed in the fall of 2002. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revisions. The responsible official will document the decisions and reasons for the decisions in a Record of Decision for the revised Plans. The decisions will be subject to appeal in accordance with 36 CFR 217.

Dated: September 23, 1999.

Tom L. Thompson,

Acting Regional Forester, Rocky Mountain Region.

[FR Doc. 99–26174 Filed 10–6–99; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on October 29, 1999, at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held October 29, 1999, beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the City of South Lake Tahoe Chamber Office, 1900 Lake Tahoe Blvd., South Lake Tahoe, CA.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executives Committees. Items to be covered on the agenda include: (1) Subcommittee Reports; (2) Strategic Planning; (3) Federal Partners, Barriers & Challenges; (4) Washoe Tribal Access; (5) Consensus Discussion; and (6) Open Public. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 30, 1999.

Edmund Gee,

Acting Forest Supervisor.

[FR Doc. 99–26134 Filed 10–6–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 7:00 p.m. on October 27, 1999, at the Hyatt Regency Buffalo, Franklin Room, 2 Fountain Plaza, Buffalo, New York 14202. The Committee will release its report, Equal Housing Opportunities in New York: An Evaluation of Section 8 Housing Programs in Buffalo, Rochester and Syracuse. The Committee will also discuss plans for a new project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Lita Taracido, 212–645–8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 30, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–26185 Filed 10–6–99; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 9 a.m. and

adjourn at 12 p.m. on Tuesday, November 9, 1999, at the Radisson Hotel Fargo, 201 Fifth Street North, Fargo, North Dakota 58102. The purpose of the meeting is to conduct a press conference to release the report, Civil Rights Enforcement Efforts in North Dakota, and to discuss possible follow-up activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–26127 Filed 10–6–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey—Annual Demographic Survey for March 2000

ACTION: Proposed collection; comment request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 6, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim Marshall, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau will conduct the Annual Demographic Survey (ADS) in conjunction with the March 2000 Current Population Survey (CPS). The Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

In the ADS we collect information on work experience, personal income, noncash benefits, health insurance coverage, and migration. The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ADS are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces, such as inflation, recession, recovery, etc., and their differential effects on various population groups.

A prime statistic of interest is the classification of persons as being in poverty and how this measurement has changed over time for various groups. Researchers evaluate March income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

The March 2000 supplement instrument will consist of the same items that were included in the March 1999 instrument with one minor change. All references to ''government payments because their income was low,'' which pertain to receipt of public assistance or welfare payments, will now be referred to as ''cash assistance from a state or county welfare program.'' This revision is based on cognitive interviews conducted in June of this year.

II. Method of Collection

The ADS is conducted at the same time as the Basic CPS by personal visits and telephone interviews, using computer-assisted personal interviewing and computer-assisted telephone interviewing.

III. Data

OMB Number: 0607–0354.

Form Number: None. We conduct all interviewing on computers.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000 per month.

Estimated Time Per Response: 25 minutes.

Estimated Total Annual Burden Hours: 20,833.

Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–26188 Filed 10–6–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

1999 Economic Census Pretest

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 6, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bruce M. Goldhirsch, U.S. Census Bureau, Room 2614/3, Washington, DC 20233–6100, (301–457–2626).

SUPPLEMENTARY INFORMATION:

I. Abstract

The proposed information collection is a test of an alternative form design for collecting retail trade data in the upcoming 2002 Economic Census. Currently, we collect the retail trade statistics in the economic census using a two column 8½ x 14 inch size report form. The current design has the most important questions, total receipts, payroll, employment, and kinds of business activity on the first page of the questionnaire.

The Census Bureau will test the effects of changing the report form from the two column 8½ × 14 to a single column 8½ × 11 form. The single column 8½ × 11 inch form has the advantage of being easier to fax, photocopy, download from the Internet, and has been requested by our respondents. Items we are looking for in this pretest are the possible effects on the response rate because the forms will have more pages and possible higher item nonresponse rate for the key data items that will move from page one of the questionnaire to page two.

There will be four panels comprising the 1999 pretest. Each panel will use the existing 1997 data content. The first panel will be the standard two column 8½ × 14 inch form and will be a control panel. The second panel will be a two column 8½ × 11 inch form. The third panel will be a single column 8½ × 11 inch form. The fourth panel will be a single column 8½ × 14 inch form.

Each panel will have 2,381 respondents. This will enable us to measure a reporting change of 5 percent or more with a 90 percent confidence level assuming a 50 percent response rate.

For the pretest we have selected three retail trade forms from the 1997 census. They are the RT–5504, Gasoline Stations; RT–5801, Eating, Drinking Places; and RT–5901, Health and Personal Care Stores. Each report form will be subjected to the same four panel treatment.

II. Method of Collection

The collection for the 1999 Economic Pretest will use a mail-out/mail-back method.

III. Data

OMB Number: Not available.

Form Number: RT–5504A, RT–5504B, RT–5504C, RT–5504D, RT–5801A, RT–5801B, RT–5801C, RT–5801D, RT–5901A, RT–5901B, RT–5901C, and RT–5901D.

Type of Review: Regular.

Affected Public: Single unit retail establishments.

Estimated Number of Respondents: 9,524.

Estimated Time Per Response: .77 hours.

Estimated Total Annual Burden Hours: 7,333.

Estimated Total Annual Cost: We do not expect respondents to incur any costs other than that time required to complete the questionnaire. The total time cost is estimated to be $97,095. The information requested is of the type and scope normally carried in company records and no special hardware or accounting software or system is necessary to provide answers to this information collection. Therefore, respondents are not expected to incur any capital and start-up costs or system maintenance costs in responding. Further, purchasing of outside accounting or information collection services, if performed by the respondent, is part of usual and customary business practices and not specifically required for this information collection.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131, 193, and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–26189 Filed 10–6–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092899F]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of workshop.

SUMMARY: NMFS and the United States Coast Guard North Pacific Regional Fisheries Training Center will present an integrated approach to clarify and explain NMFS 2000 recordkeeping and reporting requirements for the Alaska groundfish fisheries. In addition, information on the proposed shoreside electronic delivery report will be presented. The workshop will provide

detailed instructions on completion and submittal of the required logsheets and reporting forms developed for the American Fisheries Act, open-access groundfish, Community Development Quota, Individual Fishing Quota, and at-sea scale programs.

DATES: Friday, November 19, 1999, 10 a.m. until 12 noon, Alaska local time.

ADDRESSES: The workshop will be held at FISH EXPO, Room 210, Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION: Other workshops will be held at later dates in Homer, Kodiak, and Sitka, AK, and in Seattle, WA, to provide industry with information for NMFS 2000 recordkeeping and reporting requirements for the Alaska groundfish fisheries as required by regulations at 50 CFR part 679.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy Bearden at 907–586–7228 at least 7 working days prior to the meeting date.

Dated: October 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26123 Filed 10–6–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Cantor Financial Futures Exchange's Proposal To Adopt Block Trading Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new rules and rule amendments of the Cantor Financial Futures Exchange to establish block trading procedures and request for comment.

SUMMARY: The New York Board of Trade, on behalf of the Cantor Financial Futures Exchange, Inc. (''CX'' or ''Exchange''), has submitted proposed new rules and rule amendments to the Commission that would establish block trading procedures at CX. Under these procedures, qualified market participants would be allowed to negotiate and arrange futures transactions of a minimum size bilaterally away from the centralized, competitive market. Once the specific terms of the block transaction had been agreed to, the counterparties would report the relevant details of the transaction to the Exchange for clearing and settlement. CX's proposal is the first contract market proposal that the Commission has received that would allow block trading.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Division of Trading and Markets (''Division'') has determined to publish CX's proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before October 22, 1999.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5221 or by electronic mail to secretary@cftc.gov. Reference should be made to the ''Cantor Financial Future Exchange's Proposal to Adopt Block Trading Procedures.''

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1999, the Commodity Futures Trading Commission issued an Advisory on Alternative Execution, or Block Trading, Procedures for the Futures Industry.[1] Through this Advisory, the Commission announced its intention to consider contract market proposals to adopt alternative execution, or block trading, procedures for large size or other types of orders on a case-by-case basis under a flexible approach to the requirements of the Commodity Exchange Act (''Act'') and the Commission's regulations. Under this approach, each contract market retains the discretion to permit alternative execution procedures and has the ability to develop procedures that reflect the particular characteristics and needs of its individual markets and market participants.

After the issuance of the Advisory, the New York Board of Trade, on behalf of CX, submitted proposed new CX Rules 4–A and 305–A and proposed amendments to CX Rules 300, 302, and 306 to the Commission pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulation 1.41(c).[2] The proposed new rules and rule amendments would establish block trading procedures at CX. Under these procedures, qualified market participants would be allowed to negotiate and arrange futures transactions of a minimum size bilaterally away from the centralized, competitive market. Once the specific terms of the block transaction had been agreed to, the counterparties would report the relevant details of the transaction to CX for clearing and settlement. Thus, under the proposed procedures, certain futures transactions could be executed noncompetitively rather than through CX's electronic order-matching system.

II. Description of the Proposed Block Trading Procedures

A. Eligible Contracts and Market Participants

Under the proposed procedures, block trading would be permitted in any contract that has been designated by CX for such purpose. CX is seeking to permit block trading in those contracts for which it has been designated as a contract market by the Commission.[3] CX's proposal also would restrict block trading to those market participants that qualify as an ''eligible participant'' as that term is defined by Commission Regulation 36.1(c)(2). However, a commodity trading advisor registered under Act (including without limitation any investment advisor registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act or the Commission's regulations) with total assets under management exceeding $50 million may enter into block

[1] 64 FR 31195 (June 10, 1999); 64 FR 34851 (corrections). The Commission first raised the subject of alternative execution, or block trading, procedures in its Concept Release on the Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market. 63 FR 3708 (January 26, 1998). Through the Concept Release, the Commission wished to explore whether certain alternative execution procedures for large size or other types of orders could be developed to satisfy the needs of market participants while furthering the policies and purposes of the Commodity Exchange Act and the Commission's Regulations.

[2] *See* Letter from Ms. Audrey R. Hirschfeld, Senior Vice President and General Counsel, New York Board of Trade to Ms. Jean A. Webb, Secretary, Commodity Futures Trading Commission, dated September 15, 1999.

[3] Such contracts include: (1) U.S. Treasury Bond futures; (2) U.S. Treasury Ten-Year Note futures; (3) U.S. Treasury Five-Year Note futures; and (4) U.S. Treasury Two-Year Note futures.

transactions on behalf of customers without these customers having to qualify as ''eligible participants'' under Commission Regulation 36.1(c)(2).

A ''Clearing Member,'' ''Screen Based Trader,'' or ''Foreign Screen Based Trader,'' as these terms are defined in CX's rules, would be able to enter into block transactions either on a proprietary basis or, if otherwise permitted, on behalf of customers or other third parties. These entities (or any of their affiliates) would be eligible to execute block transactions on a proprietary basis only if they were ''Primary Market Makers'' in the relevant contract market.[4] In addition, only Primary Market Makers would be allowed to make markets in block trades. Block transactions executed directly between two Primary Market Makers, or between a Primary Market Maker represented by an agent and another Primary Market Maker would be prohibited.

B. Size and Price Requirements

Each buy or sell order underlying a block trade must authorize its execution through CX's proposed block trading procedures and must be for at least 50 contracts.[5] This minimum size requirement would increase once the average monthly trading volume on CX with respect to the relevant contract reached certain thresholds for three consecutive months. Specifically,the minimum size would increase to 75, 100, 200, and 250 contracts once the average monthly trading volume on CX exceeded 25,000, 50,000, 100,000, and 150,000 contracts, respectively, for three consecutive months with respect to the relevant contract.[6] The price of a block trade must be ''fair and reasonable'' in light of: (1) The size of such block trade; and (2) the price and size of other trades in the same contract at the relevant time.

C. Transparency

Each block trade executed in accordance with CX's proposed block trading procedures must be cleared through Clearing Members of the Exchange. Information identifying the relevant contract, contract month, price, quantity, time of execution and counterparty Clearing Member for each block trade must be reported to CX within ten minutes immediately following its execution. In the case of a block trade that is executed during the last ten minutes of the trading session on any given day or after the trading session has closed, the details of such a block trade must be reported to CX prior to the opening of business on the next succeeding day. CX will publicize information identifying the relevant contract, contract month, price and quantity for each block trade promptly after such information has been reported to CX.

III. Request for Comment

The Commission requests comment from interested persons concerning any aspect of CX's proposed block trading procedures.

Copies of CX's proposed new rules and rule amendments and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC. 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Issued in Washington, DC, on September 30, 1999.

Alan L. Seifert,

Deputy Director.

[FR Doc. 99–26121 Filed 10–6–99; 8:45 am]

BILLING CODE 6351–01–M

[4] In connection with its block trading procedures, CX would create a new class of market makers called ''Primary Market Makers.'' Subject to the terms and conditions of the market making agreement entered into the CX, a Primary Market Maker would be obligated to make markets in the underlying contract market throughout the trading session except for short intervals.

[5] Generally, under CX's proposed block trading procedures, orders from different accounts may not be aggregated to satisfy the minimum size requirement. However, a commodity trading advisor registered under the Act (including without limitation any investment advisor registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act of the Commission's regulations) with total assets under management exceeding $50 million may aggregate orders from different accounts to satisfy the minimum size requirement.

[6] Since the inception of CX trading in September 1998, none of CX's four Treasury securities futures contracts have ever averaged a monthly trading volume in excess of 25,000 contracts. In the three-month period from June to August 1999, CX's Treasury bond futures contract, the Exchange's highest volume contract, had an average monthly trading volume of 15,383 contracts.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Wednesday, October 20, 1999.

PLACE: 1155 21st St., N.W., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–26412 Filed 10–5–99; 3:52 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2 p.m., Thursday, October 21, 1999.

PLACE: 1155 21st St., N.W., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–26413 Filed 10–5–99; 3:52 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Carpets and Rugs

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of July 29, 1999 (64 FR 41095), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), to announce the agency's intention to seek extension of approval of collections of information in regulations implementing two flammability standards for carpets and rugs. The regulations are codified at 16 CFR Parts 1630 and 1631, and prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of products subject to the Standard for the Surface Flammability of Carpets and Rugs and the Standard for the Surface Flammability of Small Carpets and Rugs. No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget a request for extension of approval of those collections of information without change.

Additional Information About the Request for Reinstatement of Approval of Collections of Information

Agency address: Consumer Product Safety Commission, Washington, D.C. 20207.

Title of information collection: Standard for the Surface Flammability of Carpets and Rugs, 16 CFR Part 1630; Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR Part 1631.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of products subject to the flammability standards for carpets and rugs.

Estimated number of respondents: 120.

Estimated average number of hours per respondent: 532 per year.

Estimated number of hours for all respondents: 63,840 per year.

Estimated cost of collection for all respondents: Unknown.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by November 8, 1999, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, D.C. 20503; telephone: (202) 395–7340; and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone: (301) 504–0416, ext. 2226.

Dated: September 30, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–26138 Filed 10–6–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Procurement of Goods and Services

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of July 27, 1999 (64 FR 40574), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek extension of approval of a collection of information associated with the procurement of goods and services. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission's procurement activities are governed by the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 *et seq.*). That law requires the Commission to procure goods and services under conditions most advantageous to the government, considering cost and other factors. Forms used by the Commission request persons who bid on contracts with the agency to provide information about costs or prices of goods and services to be supplied; specifications of goods and descriptions of services to be delivered; competence of the bidder to provide the goods or services; and other information about the bidder, such as the size of the firm and whether it is minority-owned. The Commission uses the information provided by bidders to determine the reasonableness of prices and costs and the responsiveness of potential contractors to undertake the work involved.

Additional Information About the Request for Extension of Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Information Collection Associated with Procurement of Goods and Services.

Type of request: Extension of approval without change.

General description of respondents: Persons and firms providing bids, proposals, and quotations to the Commission for goods and services.

Estimated number of respondents: 2,457.

Estimated average number of hours per respondent: 1.86 per year.

Estimated number of hours for all respondents: 4,574 per year.

Estimated cost of collection for all respondents: $255,800 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by November 8, 1999, to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340; and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, ext. 2226.

Dated: September 30, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–26139 Filed 10–6–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Executive Order 13096, American Indian and Alaska Native Education

AGENCY: Department of Education.

ACTION: Notice inviting self-nominations for comprehensive Federal technical assistance service for school year 1999–2000.

Purpose: To invite nominations for public schools and schools funded by the Bureau of Indian Affairs to serve as models of effective education for American Indian and Alaska Native students. The selected schools will work with a special team of technical assistance providers, including Federal staff, to develop, pilot and implement a comprehensive service delivery model that coordinates and uses diverse Federal agency resources. The team will disseminate effective and promising practices of the school pilot sites to other local educational agencies. This activity is required by Executive Order 13096 on American Indian and Alaska Native Education.

Note: There is no award of funds to selected school pilot sites. The Department is not bound by any estimates in this notice.

Eligible Entities: Elementary and secondary schools providing a free public education to preschool through secondary age students that serve American Indian or Alaska Native students. In addition, elementary and secondary schools funded by the Bureau

of Indian Affairs are eligible as nominees.

Deadline for Receipt of Self-Nominations: November 8, 1999.

Estimated Number of Pilot Sites To Be Selected: 7–9.

Estimated Length of Technical Assistance Period: 12 Months.

Definitions: For the purposes of this notice, the following definitions apply:

(1) Free Public Education. The term ''free public education'' means education that is—

(A) Provided at public expense, under public supervision and direction, and without tuition charge; and

(B) Provided as elementary or secondary education in the applicable State or to preschool children.

(2) Inidan.—The term ''Indian'' means an individual who is—

(A) A member of an Indian tribe or band, as membership is defined by the tribe or band, including—

(i) Any tribe or band terminated since 1940; and

(ii) Any tribe or band recognized by the State in which the tribe or band resides;

(B) A descendant, in the first or second degree, of an individual described in subparagraph (A);

(C) Considered by the Secretary of the Interior to be an Indian for any purpose;

(D) An Eskimo, Aleut, or other Alaska Native; or

(E) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

ADDRESSES: Submit written nominations to the Office of Indian Education, Pilot Site Nominations, 400 Maryland Avenue, SW, Mail Stop—Room 3W111, Washington, DC 20202–6335.

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order (E.O.)13096, signed on August 6, 1998 by President Clinton, recognizes the unique educational and culturally related academic needs of American Indian and Alaska Native students, and the Federal Government's special, historic responsibility for the education of these students through its unique political and legal relationship with tribal governments. In recognition of the unique educational and culturally related academic needs of American Indian and Alaska Native students, improving educational achievement and academic progress for these students is vital to the national goal of preparing every student for responsible citizenship, continued learning, and productive employment. The Federal government is committed to improving the academic performance and reducing the dropout rate of American Indian and Alaska Native students. To help fulfill this commitment in a manner consistent with tribal traditions and cultures, the Executive Order requires Federal agencies to focus special attention on six goals:

(1) Improving reading and mathematics;

(2) Increasing high school completion and postsecondary attendance rates;

(3) Reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse;

(4) Creating strong, safe, and drug-free school environments;

(5) Improving science education; and

(6) Expanding the use of educational technology.

To accomplish these goals, Federal agencies are to develop a long-term comprehensive Federal Indian education policy that addresses the fragmentation of government services available to American Indian and Alaska Native students.

II. School Pilot Sites

E.O. 13096 requires he Departments of Education and the Interior to identify a reasonable number of schools funded by the Bureau of Indian Affairs (BIA) and public schools that can serve as models for schools with American Indian and Alaska Native students.

A special team of technical assistance providers, including Federal staff, must provide assistance to the model schools. Special attention must be given, where appropriate, to assistance in implementing comprehensive school reform demonstration programs that meet the criteria for those programs established by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–78), and to providing comprehensive service delivery that connects and uses diverse Federal agency resources.

III. Pilot Site Selections

Nominations will be evaluated by a team of representatives appointed by the Departments of Education and the Interior. The evaluation team will select a total of seven to nine school pilot sites from among those nominated. The criteria to be considered in the selection of the pilot sites include:

A. Geographic Distribution

School pilot sites will be geographically distributed. At least one school pilot site will be selected from the geographic region specified as follows:

1. Alaska.
2. Eastern Area—AL, CT, DE, FL, GA, KY, LA, MA, MD, ME, MS, NC, NH, NJ, NY, PA, RI, SC, TN, VA, VT, WV.
3. Upper Midwest—IA, IL, IN, MI, MN, OH, WI.
4. Lower Midwest—AR, KS, MO, OK.
5. Northwest/Plains—ID, MT, ND, NE, OR, SD, WA, WY.
6. Southwest—AZ, NM, TX, CO.
7. West—CA, NV, UT.

B. Other Characteristics

To obtain a wide diversity of pilot school sites, consideration will be given to other characteristics of the nominated schools within each geographic region. The following other characteristics will be considered:

1. School Type—
a. Public.
b. BIA-operated.
c. BIA contract or grant.
2. Type of Community—
a. Rural.
b. Urban.
3. Grade Level—
a. Elementary School (grade range: K–3; K–5; K–6; K–8; K–12; including schools with and without preschool programs).
b. Middle School or Junior High.
c. High School.
4. School/LEA Population—
a. Number of Indian students.
b. Total student population in LEA.
c. Percentage of Indian students in nominated school.

IV. Nomination Submission and Deadline

All nominations must be sent to the Office of Indian Education, Pilot Site Nominations, 400 Maryland Avenue, SW, Room 3W111, Washington, DC 20202–6335. No specific forms are required for submission of a nomination.

Nominations shall be considered as meeting the deadline if they are received on or before the deadline date.

Note: There is *no* award of funds to selected school pilot sites.

V. Announcement of School Pilot Site Selections

Schools selected to receive technical assistance through the School Pilot Site process will be contacted directly by the Office of Indian Education. A listing of the schools selected will be available upon written request after the pilot site selection process has been completed.

FOR FURTHER INFORMATION CONTACT: Lorraine Edmo, Office of Indian Education, Room 3W111, 400 Maryland Avenue, SW, Washington, DC 20202–6335, 202–401–1200, FAX 202–260–7779, or e-mail

''Lorraine__Edmo@ed.gov''. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request of the person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498 or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: October 1, 1999.

Judith A. Johnson,

Acting Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 99–26165 Filed 10–6–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Stewardship Workshop

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Stewardship Workshop. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, October 25, 1999, 1:00 p.m.–7:00 p.m.; Tuesday, October 26, 1999, 8:00 a.m.–7:30 p.m.; Wednesday, October 27, 1999 8:00 a.m.–3:30 p.m.; Thursday, October 28, 1999, 8:30 a.m.–11:30 a.m.

ADDRESSES:

Garden Plaza Hotel (October 25 Session), 215 South Illinois Avenue, Oak Ridge, TN 37830
Oak Ridge Mall Conference Center (October 26–28 Sessions), 333 Main Street, Oak Ridge, TN 37830

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Davis, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, TN 37831, phone (423) 576–0418.

SUPPLEMENTARY INFORMATION: The Environmental Management Site-Specific Advisory Board (EM-SSAB), Oak Ridge, in conjunction with the Oak Ridge Reservation Stewardship Group, will sponsor the EM-SSAB Workshop on Stewardship. Speakers and panelists from the Department of Energy, state and federal regulatory agencies will be on hand to discuss the issues surrounding long-term stewardship for DOE sites. Participants will also engage in small-group discussions and share issues and ideas with the entire workshop.

On October 28, DOE will hold an informal workshop to provide an opportunity for information exchange and constructive discussions between DOE and interested parties on the types of issues DOE should examine in the long-term stewardship study. DOE staff will discuss the objectives and the process of the study, describe how public input will be incorporated into the study, and address any questions from the public. The workshop will be facilitated to promote fill and open discussion among the participants.

Tentative Agenda

Monday, October 25, Garden Plaza Hotel

1 p.m.—Leave for tour of the Oak Ridge Reservation (For interested members of the public, tour arrangements should be made in advance with Ms. Carolyn Davis)
5:00–7:00 Registration (Salon C)

Tuesday, October 26, Oak Ridge Mall Conference Center, Cumberland Room

8:00 a.m.—Registration
8:30–9:00
Welcome and Introductions
Mayor, City of Oak Ridge
Chair, Oak Ridge Site, Site Specific Advisory Board
Leah Dever, Manager, Oak Ridge Operations Office
Justin Wilson, Chief Policy Advisor to Tenn. Governor Don Sundquist (invited)
9:00–9:15—Meeting Orientation, Doug Sarno, Meeting Facilitator
9:15–10:30
Panel Session: Perspectives on Stewardship
Earl Leming, Tennessee Department of Environment and Conservation
Jim Werner, DOE Headquarters
Jim Woolford, EPA Headquarters
Russell Edge, DOE Grand Junction Office
10:30–10:45—Break
10:45–11:30—Q & A on Panel Session
11:30–12:30 p.m.—SSAB Introductions
- Background on stewardship activities at each site
- Number one goal for each SSAB at the Stewardship Meeting

Fernald, Hanford, Idaho, Nevada Test, Site, Northern NM, Oak Ridge, Paducah, Pantex, Rocky Flats, Sandia, Savannah River
12:30–1:45
Lunch ($6.50 per person, collected at door), Club Room
Lunch Speaker: Carolyn Huntoon, Assistant Secretary for Environmental Management (invited)
2:00–3:20
Plenary Discussion of Four Core Topic Areas
What needs to be done?
Who should do what?
How should we deal with stewardship information?
How should stewardship be funded?
3:20–5:00
Core Topic Breakout Session I
Identify top issues and draft initial statements
5:30–7:30
Caucus and Reception, Garden Plaza Hotel

Wednesday, October 27, Oak Ridge Mall Conference Center, Cumberland Room

8:00 a.m.—Participants Arrive
8:30–10:00
Core Topics Plenary Session
Present breakout group issues and statements, plenary discussion to identify areas of agreement and suggestions for change.
10:00–10:45
Site-Specific Breakout Sessions
Site representatives discuss results of core topic breakouts and plenary sessions.
10:45–11:45
Core Topic Breakout Session II
Revise, expand, and refine statements based on site-specific and plenary feedback.
11:45–12:45—Lunch ($6.50 per person, collected at the door), Club Room
12:45–1:30
Core Breakout Session III
Select presenters and develop overheads for the plenary presentations.
2:00–3:00
Core Topic Statement Presentations to

Plenary

Present statements, plenary discussion to develop final statements.

3:00–3:15—Closing Remarks, Lorene Sigal, Chair, National SSAB Meeting on Stewardship

3:15—3:30 Sign Statements and Adjourn

Thursday, October 28, Oak Ridge Mall Conference Center

8:30–11:30—Informal workshop presented by DOE to provide information and the opportunity for a discussion on issues to be examined in DOE's long-term stewardship study

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda)

Public Participation

This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at their specific site, or Fred Butterfield at the address listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

Minutes

A written summary of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. The meeting summary will also be available by writing the EM–SSAB Chair or Designated Deputy Federal Officer of every EM–SSAB that participated in the meeting.

Issued at Washington, DC on October 4, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–26152 Filed 10–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3887–000 and EL99–92–000]

MidAmerican Energy Company; Notice of Initiation of Proceeding and Refund Effective Date

October 4, 1999.

Take notice that on June 17, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–92–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–92–000 will be 60 days after publication of this notice in the **Federal Register**.

David P. Boergers,

Secretary.

[FR Doc. 99–26162 Filed 10–6–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6453–9]

Availability of FY 98 Grant Performance Report for The Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation report.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA Region 4 recently performed an end-of-year evaluation of one state air pollution control program (Kentucky's Department for Environmental Protection). The evaluation was conducted to assess the agency's performance under the grant awarded to them by EPA pursuant to section 105 of the Clean Air Act. A report summarizing the results of this evaluation is now available for public inspection.

ADDRESSES: The report may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW, Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Vera Bowers, (404) 562–9053, at the above Region 4 address.

Dated: September 29, 1999

N. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–26198 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6453–4]

Notice of Public Meeting on the National Estimate of Waterborne Disease Occurrence

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Notice is hereby given that the Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) are holding a public meeting to present EPA and CDC's approach to developing a national estimate of disease attributable to drinking water.

EPA is inviting interested members of the public to participate in the meeting on the development of a national estimate of the occurrence of waterborne infectious disease. EPA maintains an open door policy, however, to assist EPA in managing limitations on conference room seating and to facilitate entry into a government building, we ask that persons who plan on attending, register as directed below.

Subjects to be addressed include the overall plan and schedule for development of a national estimate, an overview of completed and new research studies and surveys that will provide data for the estimate, and a discussion of the methodology for estimating infectious disease attributable to drinking water. The estimate is required under the 1996 amendments to the Safe Drinking Water Act (section 1458(d)). A detailed agenda of this meeting and copies of the reports from the two previous workshops on the same subject in 1997 can be obtained directly from the EPA Safe Drinking Water Hotline at (800) 426–4791.

Date and Location: The meeting will take place on November 18, 1999, from 9:00 am to 5:30 pm, at the Hubert A. Humphrey Building, Room 705A, 200 Independence Avenue, Washington, DC.

Registration: To assure adequate seating and quick passage through building security, EPA asks that persons planning on attending the meeting register with the EPA Safe Drinking Water Hotline at (800) 426–4791 by November 1, 1999. The Hotline can also provide information on specially reserved hotel accommodation.

For additional information please contact Susan Shaw at USEPA, 401 M Street SW., MC 4607, Washington, DC 20460. The telephone number is (202) 260–8049 or E-mail Shaw.susan@epa.gov.

Dated: October 1, 1999.

Cynthia Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–26199 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6454–2]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency gives notice of a meeting of the Good Neighbor Environmental Board.

The Good Neighbor Environmental Board was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico. The Board is required to submit an annual report to the President and the Congress. The Board has representatives from eight U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually, including an annual meeting with its Mexican counterpart, Region I of the Mexican National Advisory Council for Sustainable Development. This will be the Board's annual meeting with Region 1 of the Mexican National Advisory Council for Sustainable Development.

DATES: The Board will meet on November 3–5, 1999. The Board will have work group sessions on November 3, 1999, from 4:00–6:00 p.m. On November 4, the Board will meet independently from 9:00 a.m. until 3:30 p.m. The Board will have joint work group sessions with members of the Mexican National Advisory Council, Region 1, from 3:30–5:30 p.m. On November 5, the Board will meet jointly with members of Region 1 of the Mexican National Advisory Council for Sustainable Development from 8:30 a.m. until 2:30 p.m. The public comment session will be held on Thursday, November 4 from 12:00 p.m. to 12:30 p.m. and during the Joint Session on Friday, November 5 from 1:00 p.m. to 1:30 p.m. Seating will be limited and available on a first-come, first-served basis.

Members of the public who wish to make brief oral presentations should contact Nancy Bradley at 202–564–9741 by October 22, 1999 to reserve a time during the public comment session. Individuals or groups making presentations will be limited to a total time of five minutes. Those who have not reserved time in advance may make comments during the public comment session as time allows.

ADDRESSES: The Regency Plaza Hotel, 1515 Hotel Circle South, San Diego, California. Materials or written comments may be sent to Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA (1601A), Office of Cooperative Environmental Management, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie Medina-Ortiz, Designated Federal Officer, U.S. EPA, Officer of Cooperative Environmental Management, telephone 202–564–5987.

Dated: October 4, 1999.

Gordon Schisler,

Acting Designated Federal Official.

[FR Doc. 99–26197 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6454–5]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Advisory Council on Clean Air Compliance Analysis of the Science Advisory Board (SAB) will hold a public teleconference on Friday, October 15, 1999, from 11:30 AM–1:00 PM Eastern time. The meeting will be coordinated through a conference call connection in room 6013 at the U.S. Environmental Protection Agency (US EPA), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, North Lobby, Washington, DC 20004 (Federal Triangle Metro Stop). The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun (see below).

At this public teleconference, the Council will complete its review of the draft The Benefits and Costs of the Clean Air Act, 1990 to 2010; EPA Report to Congress (EPA, Office of Air and Radiation and Office of Policy, August 1999), prepared by the Agency as part of implementing section 812 of the Clean Air Act Amendments (CAAA) of 1990. An initial discussion of this review occurred at the Council public teleconference on Friday, October 1, 1999 (see 64 FR 46189, August 24, 1999).

The public can find background on the Prospective Study and previous meetings this year of the Council and its subcommittees in the **Federal Register** (see 64 FR 15160, March 30, 1999; 64 FR 30516–30517, June 8, 1999; 64 FR 31572–31575, June 11, 1999). For further information concerning the teleconference described in this section, please contact the individuals listed below.

For Further Information Contact

(a) *Contacting Program Office Staff and Obtaining Review Materials*—To obtain copies of the final draft CAA Section 812 Prospective Study, please contact Ms. Catrice Jefferson, Office Manager, Office of Policy Analysis and Review (OPAR), (Mail Code 6103A), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 564–1554; FAX (202) 260–9766, or via e-mail at <jefferson.catrice@epa.gov≤. To discuss technical aspects of the final draft document, please contact Mr. James DeMocker, Office of Policy Analysis and Review (OPAR) (Mail Code 6103A), US Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Tel. (202) 564–1554; FAX (202) 564–1673, or via e-mail at: <democker.jim@epa.gov≤.

(b) *Contacting SAB Staff and Obtaining Meeting Information*—To obtain copies of the meeting agenda or Council roster, please contact Ms. Diana L. Pozun, Management Assistant to the Council, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Washington, DC 20460; at Tel. (202) 564–4544; FAX (202) 501–0582; or via e-mail: <pozun.diana@epa.gov>. To discuss technical or logistical aspects of the Council review process, please contact Dr. Angela Nugent at Tel. (202) 564–4562; or via e-mail: <nugent.angela@epa.gov>), Designated Federal Officer (DFO) to the Council, Science Advisory Board (1400A), U.S.

Environmental Protection Agency, Washington, DC 20460. To obtain information concerning the teleconference and how to participate in the Conference Room location or to call in, please contact Ms. Pozun.

(c) *Providing Public Comments to the SAB*—To request time to provide brief oral comments at the meeting, please contact Ms. Diana L. Pozun *in writing* by mail, FAX or e-Mail at the addresses given above no later than 12 noon by Tuesday, October 12, 1999. Please be sure to provide a summary of the issue you intend to present, your name and address (include phone, fax and e-mail) and the organization (if any) you will represent. Written comments should be submitted to Ms. Pozun at the above address prior to the meeting date.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0582.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 4, 1999.

Donald G. Barnes, Ph.D.,

Staff Director, Science Advisory Board.

[FR Doc. 99–26323 Filed 10–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

September 30, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0010.

Title: Ownership Report.

Form No.: FCC Form 323.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10,020.

Estimated Time Per Response: 1–7.5 hours per respondent.

Frequency of Response: On occasion and biennial reporting requirements.

Total Annual Burden: 13,202 hours.

Total Annual Cost: $10,259.000.

Needs and Uses: Each permittee of a commercial AM, FM, TV and international broadcast station shall file an FCC Form 323, Ownership Report, within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license.

Each licensee of a commercial AM, FM and TV broadcast station shall file an FCC Form 323 when they file their station's license renewal applications and every two years thereafter. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report.

The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set forth by the Commission's Rules and is in compliance with the Communications Act. The race/ethnicity and gender question will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities and to assess the need for measures designed to fulfill the statutory mandate to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry.

OMB Control No.: 3060–0715.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6,832.

Estimated Time Per Response: .5–100 hours per response.

Frequency of Response: On occasion and one-time reporting requirements, third-party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 808,889 hours.

Total Annual Cost: $229,520,000.

Needs and Uses: The Third Report and Order in CC Docket 96–115, clarifies and specifies the statutory

obligations of Section 222 of the Telecommunications Act of 1996. Among other things, all telecommunications common carriers must provide subscriber list information, gathered in their capacity as providers of telephone exchange service, to any person upon request for the purpose of publishing directories. Carriers are obligated to provide updated subscriber information and notices of changes in subscriber list information to the extent those changes reflect customer's decision to cease having a telephone number listed.

All of the collections adopted would be used to ensure that telecommunications carriers comply with section 222(e) of the statute and with subscriber list information requirements the Commission promulgates in this order in implementation of section 222(e).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26119 Filed 10–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

October 1, 1999.

Open Commission Meeting

Friday, October 8, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, October 8, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	*Title:* Applications of Ameritech Corporation, Transferor, and SBC Communications, Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules (CC Docket No. 98–141). *Summary:* The commission will consider a Memorandum Opinion and Order concerning applications for approval to transfer control of licenses and lines.
2	Cable Services	*Title:* Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (CS Docket No. 98–82); Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; and Review of the Commission's Cable Attribution Rules (CS Docket No. 96–85). *Summary:* The Commission will consider a Report and Order concerning the cable attribution rules.
3	Cable Services	*Title:* Implementation of section 11(c) of the Cable Television Consumer Protection and Competition Act of 1992; and Horizontal Ownership Limits (MM Docket No. 92–264). *Summary:* The Commission will consider a Third Report and Order concerning cable horizontal ownership limits.
4	Common Carrier Cable Services, Engineering and Technology, and Wireless Telecommunications.	*Title:* Local Competition and Broadband Reporting. *Summary:* The Commission will consider a Notice of Proposed Rulemaking proposing to collect data about the development of local telephone service competition and the deployment of broadband services from telecommunications carriers and others.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111. Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26287 Filed 10–5–99; 11:44 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–010977–035.

Title: Hispaniola Discussion Agreement.

Parties:

A.P. Moller-Maersk Line
Crowley American Transport, Inc.
Del Line LLC
Kent Line Limited
Marine Express
NPR, Inc.
Sea-Land Service, Inc.
Seaboard Marine Ltd.
Tropical Shipping and Construction Co., Ltd.
U.S.A. Tecmarine Incorporated.

Synopsis: The parties are adding authority to adopt voluntary guidelines for their individual service contracts, to appoint an agreement secretariat, and to share expenses for that purpose. They are also modifying their space charter authority and deleting a number of obsolete references.

Dated: October 1, 1999.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–26115 Filed 10–6–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding revocation dates shown below:

License Number: 3419.
Name: Aleida Customs Brokers, Inc.
Address: 6090 N.W. 84th Avenue, Miami, FL 33166.
Date Revoked: May 8, 1999.
Reason: Failed to maintain a valid bond.

License Number: 4188.
Name: Allstates Air Cargo, Inc.
Address: 4 Lakeside Drive East, P.O. Box 959, Forked River, New Jersey 08731–0959.
Date Revoked: September 7, 1999.
Reason: Surrendered license voluntarily.

License Number: 4454.
Name: ANA Logistics, Inc.
Address: 600 Renaissance Center, Suite 1400, Detroit, MI 48243.
Date Revoked: June 2, 1999.
Reason: Failed to maintain a valid bond.

License Number: 640.
Name: Del Mar Shipping Corporation.
Address: 1750 West Cameron Avenue, Suite 110, West Covina, CA 91790.
Date Revoked: April 26, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 710.
Name: F. W. Myers & Co., Inc.
Address: 72 Lake Street, Rouses Point, NY 12979.
Date Revoked: June 10, 1999.
Reason: Failed to maintain a valid bond.

License Number: 2234.
Name: Gayo International Forwarders, Inc.
Address: 7263 N.W. 12th Street, P.O. Box 524103, Miami, FL 33152–4103.
Date Revoked: April 21, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 2698.
Name: Georgia International Forwarding Co., Inc.
Address: 125 Lady Helen Court, P.O. Box 904, Fayetteville, GA 30214.
Date Revoked: June 2, 1999.
Reason: Failed to maintain a valid bond.

License Number: 4497.
Name: Gilbert Jinger Ji d/b/a Harvest International Co.
Address: 14797 Carmenita Road, Norwalk, CA 90650–5230.
Date Revoked: April 30, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 3773.
Name: Goldmar Cargo, Inc.
Address: 6804 NW 84th Avenue, Miami, FL 33166.
Date Revoked: May 6, 1999.
Reason: Failed to maintain a valid bond.

License Number: 2986.
Name: High Seas Forwarding, Inc.
Address: 22064 East Lyndon Loop, Castro Valley, CA 94552.
Date Revoked: August 23, 1999.
Reason: Surrendered license voluntarily.

License Number: 4332.
Name: Impel America Packing and Appliances, Corp.
Address: 5461 NW 72nd Avenue, Miami, FL 33166.
Date Revoked: April 22, 1999.
Reason: Failed to maintain a valid surety bond.

License Number: 1330.
Name: Pan Atlantic Shipping Inc.
Address: 40 Northfield Avenue, Edison, NJ 08818.
Date Revoked: May 9, 1999.
Reason: Failed to maintain a valid bond.

License Number: 3943.
Name: RHE Specialty Transport, Inc.
Address: 44 Sellers Street, Kearny, NJ 07032.
Date Revoked: June 9, 1999.
Reason: Failed to maintain a valid bond.

License Number: 1448.
Name: Richard Diaz d/b/a C.A. Mar Freight Forwarding.
Address: 10380 SW 97th Street, Miami, FL 33176.
Date Revoked: May 15, 1999.
Reason: Failed to maintain a valid bond.

T. A. Zook,

Deputy Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–26114 Filed 10–6–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Bonex Shipping & Air Freight USA Corp, 1999 W. Walnut Street, Compton, CA 90220. Officers: Seong Uk Hong, Secretary (Qualifying Individual), Joon Ho Yang, President.
Kenny International USA, Inc., 182–30 150th Road, Suite 215, Jamaica, NY 11413. Officers: Chong Chang Song, President (Qualifying Individual), Sung Ho Hong, Vice President.
Nautical Services Corporation d/b/a Rush International, 5005 Mitchelldale, Suite 121, Houston, TX 77092. Officer: Ronald M. Russell, President (Qualifying Individual).
Sterling Container Line Limited, Level 7, 713–20 Metroplaza, Tower 11, 223 Hing Fong Road, Kwai Fong, N.T., Hong Kong, Armen Frey, Director (Qualifying Individual), Thomas James Forrer, Director.
Uniglobal Logistics, Inc., 39 Old Ridgebury Road, Danbury, CT 07817. Officers: Robert H. Shellman, President (Qualifying Individual), Douglas A. Johnston, Vice President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

World International Cargo Transfer USA, Inc., 11222 La Cienega Blvd., Suite #268, Inglewood, CA 90304.

Officers: Augusto G. Santos, President, Kitaik Chung, Managing Director (Qualifying Individual).

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

GRV Export Services, 1915 Barnsley Ln., Houston, TX 77088, Guadalupe R. Vera, Sole Proprietor.

NTD Shipping, Inc., 12110 Oak Park Drive, Houston, TX 77070. Officers: Casie McCorquodale, President (Qualifying Individual), Diana Atchison, Secretary.

Arrowpac Incorporated, 2240 74th Street, North Bergen, NJ 07047. Officers: Paul S. Doherty, Jr., President (Qualifying Individual), Walter J. Kenney, Vice President.

Philippine Unimovers Express, 1325 West Willow Street, Long Beach, CA 90810, Emanuel Nacario, Sole Proprietor.

Dated: October 1, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–26116 Filed 10–6–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Compass Bancshares, Inc., Birmingham, Alabama; to merge with Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Northern Plains Investment, Inc., Jamestown, North Dakota; to acquire an additional 1.39 percent, for a total of 43.33 percent of the voting shares of North Star Holding Company, Inc., Jamestown, North Dakota, and thereby indirectly acquire Stutsman County State Bank, Jamestown, North Dakota.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Minden Bancshares, Inc., Minden, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust, Minden, Nebraska.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. VIB Corp, El Centro, California; to acquire 100 percent of the voting shares of Kings River Bancorp, Reedley, California, and thereby indirectly acquire Kings River State Bank, Reedley, California.

Board of Governors of the Federal Reserve System, October 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-26111 Filed 10–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Regal Bancorp, Inc., Owings Mills, Maryland; to acquire Mobile Check Cash, Inc., Stratford, New Jersey, and thereby engage in money transmission services and other related activities; *See Popular, Inc., 84 Fed Res Bull. 48 (1998)*, and in the issuance and sale at retail of money orders, pursuant to § 225.28(b)(13) of Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–26112 Filed 10–6–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security, Workgroup on Computer-based Patient Records.

Time and Date: 9:00 a.m. to 5:30 p.m., October 14, 1999; 8:45 a.m. to 4:00 p.m., October 15, 1999.

Place: Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Work Group will continue to gather information and discuss issues related to the development of standards for electronic medical records. The Working Group will hear from panelists of data quality experts, code set developers and users, and standards users. The Work Group will also review progress on the Government's Computerized Patient Records initiative, develop agendas for future meetings, and discuss its future report to the Department of Health and Human Services.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, #602, Rockville, MD 20852, phone: 301–594–1483, x1052; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Dated: October 1, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–26140 Filed 10–6–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1010]

Agency Information Collection Activities; Announcement of OMB Approval; Investigational New Drug (IND) Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Investigational New Drug (IND) Regulations'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 6, 1999 (64 FR 24402), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0014. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 30, 1999.

William K, Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–26103 Filed 10–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0222]

Agency Information Collection Activities; Announcement of OMB Approval; Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 20, 1998 (63 FR 64555), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0390. The approval expires on September 30, 2002 A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–26104 Filed 10–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Export of American Ginseng

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service seeks comments and input on the conservation status of American ginseng (*Panax quinquefolius*) and the impact of harvest and international trade on the species. This review of the status of the species and related trade will assist in determining any appropriate modification to export restrictions for wild American ginseng during the 2000 harvest season and beyond.

DATES: We will consider comments and information submitted by all interested parties by February 4, 2000.

ADDRESSES: You may submit any comments or information by mail to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240, or via fax (703–358–2276). You may also submit comments via E-mail to: r9osa@fws.gov. You may inspect any comments and information we receive, by appointment only, from 8:00 a.m. to 4:30 p.m., Monday through Friday, at the Office of Scientific Authority, 4401 N. Fairfax Dr., Room 750, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Javier Alvarez, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240 (phone: 703–358–1708; fax: 703–358–2276; e-mail: r9osa@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

American ginseng (*Panax quinquefolius*) was listed in Appendix II of the Convention on International

Trade in Endangered Species of Wild Fauna and Flora (CITES) on February 22, 1977. The Department of the Interior is designated by the U.S. Endangered Species Act as both the CITES Management and Scientific Authority, and is therefore obligated to regulate the export of American ginseng, including whole plants, whole roots, and root parts. Those functions have been delegated to the Office of Management Authority and the Office of Scientific Authority of the U.S. Fish and Wildlife Service. Under the authority of the CITES treaty (Article IV), implemented by the U.S. Endangered Species Act, we can only allow the export of American ginseng from the United States if the Office of Scientific Authority advises the Office of Management Authority that such export will not be detrimental to the survival of the species, and if the Office of Management Authority is satisfied that the specimens to be exported were not obtained in contravention of any laws for their protection (that is, they were legally acquired). CITES Article IV also requires that the Scientific Authority monitor the exports of all Appendix II species, including American ginseng, and determine whether any such exports ''should be limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems in which it occurs and well above the level at which that species might become eligible for inclusion in Appendix I * * *''

The Office of Scientific Authority uses a wide range of information to ensure that the species remains at healthy population levels throughout its range and to determine whether export of ginseng will not be detrimental to the survival of the species. That information includes but is not limited to the following: (1) Whether such export occurred in the past, and has appreciably reduced abundance or distribution of the species; (2) whether such export has or is expected to increase, remain constant, or decrease; and (3) whether the life-history parameters of the species indicate that the present and projected levels of export will reduce appreciably the numbers or distribution of the species. The information is available from State regulatory agencies, industry representatives and associations, non-governmental organizations, and academic researchers.

Under both the CITES treaty and the Endangered Species Act, the Office of Scientific Authority has the option of issuing the required scientific findings on a permit-by-permit basis, or programmatically on a State-by-State basis. There are native U.S. species listed in Appendix II for which the Office of Scientific Authority issues its non-detriment findings to the Management Authority on a shipment-by-shipment basis, while there are others for which the Office of Scientific Authority issues findings on a State-by-State basis. Since the inclusion of American ginseng in CITES Appendix II in 1977, the Office of Scientific Authority has issued its findings on a State-by-State basis.

To determine whether or not to approve exports of American ginseng harvested in a State, the Office of Scientific Authority annually reviews publicly available data from many sources, including each State with a ginseng harvest program, on the general status of the species in each State. Based on information available (such as pounds of wild ginseng harvested; average roots/lb; average age of harvested plants estimated by counting bud scars or converting dry weight to age; and trends in abundance of wild ginseng populations as measured in field surveys), the Office of Scientific Authority makes a finding on the continued export of wild ginseng from a specific State. Information on ginseng harvest programs are reviewed and compared with information from previous harvest seasons by the Office of Scientific Authority and Office of Management Authority on June of each year. Afterwards, a finding on the export of ginseng to be harvested during the year in question is made by the Office of Scientific Authority early in the summer.

On August 2, 1999, the Office of Scientific Authority issued its finding on the export of American ginseng harvested during the 1999 season from States with ginseng harvest programs. Although the Office of Scientific Authority was able to make a positive finding, it was able to do so only for ginseng roots 5 years old or older, and not for all roots (as in previous years). We conditioned our non-detriment finding after reviewing the best scientific information currently available to the Office of Scientific Authority on the biology and status of American ginseng. Through communications with biologists from Great Smoky Mountains National Park and National Forests throughout the species' range (including those in Arkansas, Georgia, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin), the Office of Scientific Authority has become aware that ginseng plants are not only being over-harvested in some parts of the country, but also that plants harvested are not afforded the opportunity to reach reproductive age and produce seeds. Independent ginseng researchers have contacted the Office of Scientific Authority concerning their surveys of ginseng populations in States that do not have wild ginseng harvest programs. They have found further evidence that young ginseng plants are being harvested and that ginseng populations may not be able to sustain harvest of such young plants.

Given that wild ginseng does not propagate asexually, it is critical that plants be allowed to reach reproductive age and produce seeds prior to their harvest so as to ensure replacement of the harvested plants and long-term survival of the species. Most ginseng plants start producing seeds when they attain 2 leaves (also known as prongs) at 3 to 4 years of age (R. C. Anderson, J. S. Fralish, J. E. Armstrong, and P. K. Benjamin. 1984. Biology of ginseng, *Panax quinquefolius*, in Illinois. Illinois Department of Conservation, Division of Forest Resources and Natural Heritage, Springfield, Illinois. 32 pages.) Ginseng plants add a third prong between 5 and 9 years of age, with the majority of them doing so when they are 7 years old.

Based on the above information and to ensure that ginseng plants harvested from the wild reach reproductive age and produce seeds for at least two seasons, the Office of Scientific Authority requested in its August 2, 1999 finding that the Office of Management Authority, which is responsible for issuing CITES permits, condition permits for the export of ginseng roots harvested from the wild in the 1999 season so as to allow only export of roots that are 5 years of age or older. Without the inclusion of an age-based condition in each CITES export permit for wild American ginseng, we would not have found that the harvest of ginseng from the wild during the 1999 season is not detrimental to the survival of the species.

Most States with wild ginseng harvest programs (including Alabama, Arkansas, Georgia, Indiana, Iowa, Maryland, Minnesota, New York, Ohio, Pennsylvania, Tennessee, Vermont, West Virginia, and Wisconsin) already have regulations in place that prohibit the harvest of ginseng plants with less than three prongs (compound leaves); that is, harvested plants must be at least 5 years old. Therefore, the age-based restriction of export of wild ginseng roots does not constitute any new restriction on the harvest of wild ginseng roots in these States. We are simply assisting the States in the enforcement of their own regulations by

discouraging individuals from digging plants that have not yet reproduced, as well as discouraging dealers from purchasing roots of young plants. Likewise, as of August 30, 1999, the U.S. Forest Service—Eastern Region has also directed that permits for the collection of wild ginseng on National Forest lands (including Shawnee National Forest, Illinois; Hoosier National Forest, Indiana; Huron and Manistee National Forests, Michigan; Chippewa and Superior National Forests, Minnesota; Mark Twain National Forest, Missouri; Wayne National Forest, Ohio; Alleghany National Forest, Pennsylvania; Green Mountain National Forest, Vermont; Monongahela National Forest, West Virginia; Chequamegon-Nicolet National Forest, Wisconsin) be restricted to plants at least 5 years of age. Our ultimate objective is to prevent the extirpation from the wild of this valuable natural resource and the resultant negative economic impact this would have on citizens who depend on this plant as a source of income.

The issuance of a ''non-detriment'' finding by the Scientific Authority is required by both the Endangered Species Act and the CITES treaty as one of the prerequisites that must be met before any export permit can be issued for an Appendix-II species. As such, the non-detriment finding is one of several administrative determinations that comprise the decision-making process for the issuance of CITES permits. Prior to 1994, we issued multi-year findings on exports of American ginseng through a Notice in the **Federal Register** as an informational matter. For the past several years, we issued our findings on an annual administrative basis. New biological information available to us precludes the issuance of a multi-year non-detriment finding. The Service consulted with the ginseng program coordinators from all States where harvest of wild ginseng is allowed, prior to the Office of Scientific Authority issuing its 1999 finding.

The responsibility for inspection of all plant import and exports, including shipments of ginseng, rests with the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS). Policies on the inspection and clearance of plant shipments, including ginseng, are made by APHIS. We work closely with APHIS, and continue to work closely in the enforcement and implementation of the new permit condition.

Public Comments Solicited

In anticipation of the ginseng harvest season for 2000 and beyond, we are seeking information from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party on the status of ginseng populations in the wild. We particularly seek biological and trade information concerning the impact of ginseng harvest and international trade on wild populations of the species, the current conservation status of the species throughout its range, or other relevant data concerning any threat to the species. Such information may lead us to modify current restrictions on the export of wild American ginseng during the 2000 harvest season, and beyond.

Author: The primary author of this notice is Dr. Javier Alvarez, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240.

Dated: September 30, 1999.

Jamie Rappaport Clark,

Director.

[FR Doc. 99–26205 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Great Lakes Panel Meeting and Ruffe Control Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces meetings of the Aquatic Nuisance Species (ANS) Task Force Great Lakes Panel Committee and the Ruffe Control Committee. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Great Lakes Panel will meet 1 p.m. to 5 p.m. on Tuesday, October 19, 1999, and 8 a.m. to 12 noon on Wednesday, October 20, 1999. The Ruffe Control Committee will meet from 1 p.m. to 5 p.m. on Thursday, October 28, 1999, and 8 a.m. to 12 noon on Friday, October 29, 1999.

ADDRESSES: The Great Lakes Panel meeting will be held at Metcalfe Federal Office Building, 77 W. Jackson Boulevard, Chicago, Illinois and the Ruffe Control Committee meeting will be held at the Best Western Inn, 6285 Saginaw Road, Bay City, Michigan.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: sharon__gross@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces meetings of the Aquatic Nuisance Species Task Force Great Lakes Panel Committee and the Ruffe Control Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Great Lakes Panel, comprised of representatives from Federal, State, and local agencies and from private environmental and commercial interests, provides the following:

(a) Identify priorities for the Great Lakes Region with respect to aquatic nuisance species;

(b) Make recommendations to the Task Force regarding programs to carry out zebra mussel programs;

(c) Assist the Task Force in coordinating Federal aquatic nuisance species program activities in the Great Lakes region;

(d) Coordinate, where possible, aquatic nuisance species program activities in the Great Lakes region that are not conducted pursuant to the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (as amended, 1996);

(e) Provide advice to public and private individuals and entities concerning methods of controlling aquatic nuisance species; and

(f) Submit an annual report describing activities within the Great Lakes region related to aquatic nuisance species prevention, research, and control.

The focus of this meeting will be to: review Panel activities for the past year, hear updates of ongoing activities, and review the Great Lakes Action Plan.

Topics to be covered at the Ruffe Control Committee meeting will include: the status of existing ruffe populations, a detailed review of each of the eight components of the ruffe control plan, an evaluation of the bait harvest prohibitions currently in place on Lake Superior, and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: October 1, 1999.

Hannibal Bolton,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 99–26125 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–99–2821–00–D889]

Closure and Restriction Orders

AGENCY: Bureau of Land Management, (BLM) Interior.

ACTION: Emergency closure of certain public lands to human entry in the Juniper Flats area, in San Bernardino County, California.

SUMMARY: Public lands in the Juniper Flats area are barred to human entry during Labor Day weekend, 1999. Closed are approximately 16,000 acres burned in the Willow fire. This 3-day emergency closure applies to all types of human access, including but not limited to: motor vehicles, equestrian, bike and foot traffic. This action prevents conflicts with ongoing fire suppression activities. The closure also protects visitors, soil, cultural resources, vegetation, wildlife, and wildlife habitat from further impact following damage from the fire.

DATES: This closure order goes into effect at 1 p.m. on Friday, September 3, 1999 and shall remain in effect until 12 midnight on Monday September 6, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Read, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6000.

SUPPLEMENTARY INFORMATION: On Saturday August 28th, the Willow Fire started on U.S. Forest Service lands adjacent to BLM lands in the Juniper Flats area. The fire quickly spread and burned approximately 16,000 acres of BLM land. The fire is still burning and will not be contained before the start of the holiday weekend. Travel in the fire area is unsafe due to fire suppression activities, burned direction signs, rock slides and fallen trees.

As a result of the fire cultural resources, soils, vegetation, wildlife, and wildlife habitat are highly susceptible to further impacts resulting from human activity in the area. The fire burned away the vegetative cover and left bare soils exposed. The loss of vegetation has also stressed wildlife populations by reducing cover and forage. This emergency closure is required to prevent disturbances to sensitive resources in order to avoid excessive soil erosion and loss, vegetative damage, riparian area degradation, destruction of range management fences, and water quality impacts.

In general, all public lands are closed up to the Forest Boundary east of Deep Creek Road, South of the Atchison Topeka and Sante Fe Rail lines and west of Highway 18. The authority for this closure is 43 CFR 8364.1. This closure only applies to those portions of the following listed sections which were burned during the Willow Fire: San Bernardino Base and Meridian, T.3N. R.1W. Sections 2, 3, 4, 5, 6; T.3N, R.2W. sections 1, 2, 3, 4, 5, 6, 7 and 8; T.3N. R.3W. sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; T.4N. R.1W. sections 31 and 32; T.4N. R.2W. sections 26, 27, 28, 29, 31, 32, 33, 34 and 35; T.4N. R.3W. sections 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 35. Any person who fails to comply with this closure order is subject to a fine of up to $100,000 or imprisonment of up to 12 months, or both.

The following activities are exempt to this closure: law enforcement, emergency vehicles, agency personnel on official business, permitted uses, and the minimum access required to maintain utilities and infrastructure in the affected area. Private landowners and their guest accessing their land are also exempt. This closure affects only public lands. County roads and segments of roads through private lands are unaffected. The following route across public land is exempt from this closure: Browen Ranch Road, through public lands in section 31 of T.4N. R.2W., and sections 1, 11 and 12 of T.3N. R.3W.

This section will be reviewed in the context of the recommendations to be made by the fire rehabilitation team. If needed, the closure will be reissued for a longer time period, possibly a year.

Brad Blomquist,

BLM, Acting Barstow Field Office Manager.

[FR Doc. 99–24821 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–99–2822–00–D889]

Closure and Restriction Orders

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of certain public lands to human entry in the Juniper Flats area, San Bernardino County, California.

SUMMARY: Public lands in the Juniper Flats area are closed to human entry for 30 days, from September 18, 1999, to October 17, 1999. Closed are approximately 16,000 acres burned in the Willow fire. You are not to enter the closed area by any means of access, including but not limited to: motor vehicles, OHVs, equestrian, bike or foot traffic. The closure protects soil, cultural resources, vegetation, wildlife, and wildlife habitat. It also allows on-going fire assessment and repair activities to occur without interruption.

DATES: This closure order goes into effect at 12:01 a.m. on Saturday, September 18, 1999, and shall remain in effect until 11:59 p.m. on Sunday, October 17, 1999.

FOR FURTHER INFORMATION CONTACT: Tim Read, Barstow Field Office Manager, Bureau of Land Management, 2601 Barstow Road, Barstow, CA 92311; or call (760) 252–6000.

SUPPLEMENTARY INFORMATION: On Saturday, August 28th, the Willow Fire started on U.S. Forest Service lands adjacent to BLM lands in the Juniper Flats area. The fire burned 63,486 acres, including approximately 16,000 acres of BLM land. Natural resources comprising the local ecosystems were extensively damaged by the fire. The vegetative cover was burned away leaving bare soils exposed and vulnerable to erosion. The loss of vegetation has also stressed wildlife populations by reducing available cover and forage.

As a result of the fire damage, cultural resources, soils, vegetation, wildlife, and wildlife habitat are extremely sensitive to further impacts from human activity. The closure is required to prevent disturbances to these sensitive resources. By preventing disturbances we will avoid excessive soil erosion and loss, vegetative damage, wildlife mortality, riparian area degradation, destruction of range management fences, and water quality impacts. Temporarily closing the area provides a protected environment for natural systems to begin recovering. A successful recovery is needed to sustain the long-term health of the land.

In general, all public lands are closed up to the forest boundary east of Deep Creek Road, south of the Atchison Topeka and Santa Fe rail lines and west of Highway 18. The authority for this closure is 43 CFR 8364.1. This closure only applies to those portions of the following sections burned during the Willow Fire: San Bernardino Base and Meridian, T.3N. R.1W. sections 2, 3, 4, 5, 6; T.3N. R.2W. sections 1, 2, 3, 4, 5, 6, 7 and 8; T.3N. R.3W. sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; T.4N. R.1W. sections 31 and 32; T.4N. R.2W. sections 26, 27, 28, 29, 31, 32, 33, 34 and 35; T.4N. R.3W. sections 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34 and 35. If you fail to comply with this

closure order you may be fined up to $100,000.00 or be imprisoned for up to 12 months, or both.

You are exempt from this closure if you are engaged in one these activities: law enforcement, emergency services, agency personnel on official business, permitted uses, or work to maintain utilities and infrastructure. You and your guests are exempt if you own property or live within the closed area. This closure affects only public lands. County roads and segments of roads through private lands are unaffected. You are exempt to use the portion of Bowen Ranch Road that is a County road. The exempt portion crosses public lands in section 31 of T.4N. R.2W., and sections 1, 11 and 12 of T.3N. R.3W., ending at the boundary of the Bowen Ranch.

A previous 3-day emergency closure provided immediate protection for the burned area during Labor Day weekend. This 30-day closure is intended to provide interim protection while a long term rehabilitation strategy is developed. The strategy will be based on a report being prepared by a fire rehabilitation team. The team is currently assessing damage and planning corrective actions. This closure order may be re-issued for a longer time period based on the rehabilitation strategy.

Brad Blomquist,

BLM, Acting Barstow Field Office Manager.

[FR Doc. 99–24822 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1620–01; WYW141568, WYW146744]

Scoping Meeting on the Belle Ayr and North Jacobs Ranch Coal Lease Applications

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of Scoping Meeting on the Belle Ayr and North Jacobs Ranch coal lease applications in response to applications received from AMAX Land Co. (now RAG Wyoming Land Co.) and Jacobs Ranch Coal Co. for Federal coal in Campbell County, WY, in the decertified Powder River Federal Coal Production Region.

SUMMARY: BLM received an application from AMAX Land Co. (now RAG Wyoming Land Co.) on March 20, 1997 (WYW141568), for a tract of Federal coal that includes about 1,579 acres and approximately 200 million tons of in-place coal in Campbell County, WY, adjacent to the existing Belle Ayr Mine. This tract is referred to as the Belle Ayr Tract. On October 2, 1998, BLM received an application from Jacobs Ranch Coal Company for a tract of Federal coal that includes about 4,821 acres and approximately 519 million tons of in-place coal in Campbell County, WY, adjacent to the existing Jacobs Ranch Mine. This tract is referred to as the North Jacobs Ranch Tract. Both tracts were applied for as maintenance lease-by-applications (LBAs), under the provisions of 43 CFR 3425.1.

The Powder River Regional Coal Team (RCT) reviewed the Belle Ayr coal lease application at their meeting on April 23, 1997, in Casper, WY, and recommended that the BLM process it. The RCT reviewed the North Jacobs Ranch coal lease application at their meeting on February 23, 1999, in Billings, MT, and recommended that BLM process it and that BLM and the State of Wyoming work with the oil and gas and coal operators to resolve conflicts with existing and proposed oil and gas development in the area of the tract.

As part of the LBA process, BLM will complete an environmental analysis, develop possible stipulations regarding mining operations, determine the fair market value (FMV) of the tract, and evaluate maximum economic recovery (MER), of the coal in the proposed tract.

BLM is considering preparing a separate environmental impact statement (EIS) for each application to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA). An EIS is being considered for the Belle Ayr tract because of the proximity of the tract to existing coalbed methane development and because of the potential for cumulative environmental impacts. An EIS is also being considered for the North Jacobs Ranch tract. Seven new Federal coal leases have been issued to the five mines south and east of Wright, WY, (including the Jacobs Ranch Mine) since decertification of the Powder River Federal Coal Region. Proposed coalbed methane development, existing oil and gas development on the tract, and the potential for cumulative impacts are other major reasons for considering an EIS.

DATES: As part of the public scoping process, a public scoping meeting is scheduled at 7 p.m., on October 19, 1999, at the Tower West Lodge, 109 North US Highway 14–16, Gillette, WY. If you have concerns or issues that you believe the BLM should address in processing these lease applications, you can express them verbally at the scoping meeting; or you can mail, e-mail, or fax written comments to BLM at the address given below by October 30, 1999.

ADDRESSES: Please address written questions, comments or concerns to Casper Field Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, WY 82601. Address e-mail to Nancy__Doelger@blm.gov, or fax comments to 307–234–1525, Attn: Nancy Doelger.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above address, or phone: 307–261–7600.

SUPPLEMENTARY INFORMATION: On March 20, 1997, AMAX Land Company (now RAG Wyoming Land Co.) filed a coal lease application with the BLM for a maintenance tract LBA for the following lands:

T. 48 N., R. 71 W., 6th PM, Wyoming
Section 18: Lots 17 thru 19;
Section 19: Lots 5 thru 19;
Section 20: Lots 3(SW4), 4(W2,SE4), 5, 6, 7(S2), 9(S2), 10 thru 16;
Section 21: Lots 13,14;
Section 28: Lots 3, 6;
Section 29: Lots 1, 6;

T. 48 N., R. 72 W., 6th PM, Wyoming
Section 24: Lots 1,8

The tract includes 1,578.741 acres more or less, with an estimated 200 million tons of coal in place.

The Belle Ayr Mine is adjacent to the lease application area. The Belle Ayr Mine has an approved mining and reclamation plan, and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality (DEQ) to mine up to 25 million tons of coal per year. According to the application filed for the Belle Ayr Tract, it is a maintenance tract that would be mined to extend the life of the existing mine.

On October 2, 1998, Jacobs Ranch Coal Company filed a coal lease application with the BLM for a maintenance tract LBA for the following lands:

T. 44 N., R. 70 W., 6th PM, Wyoming
Section 26: Lots 9, 10;
Section 27: Lots 1 thru 16;
Section 28: Lots 1 thru 16;
Section 29: Lots 1 thru 16;
Section 30: Lots 5 thru 20;
Section 31: Lots 5 thru 20;
Section 32: Lots 5 thru 20;
Section 33: Lots 4, 5, 12, 13;

T. 44 N., R. 71 W., 6th PM, Wyoming
Section 25: Lots 1 thru 16

The tract includes 4,821 acres more or less with an estimated 519 million tons of coal in place.

The Jacobs Ranch Mine is adjacent to the lease application area. The Jacobs

Ranch Mine has an approved mining and reclamation plan, and an approved air quality permit from the Air Quality Division of the Wyoming DEQ to mine up to 35 million tons of coal per year. According to the application filed for the North Jacobs Ranch Tract, it is a maintenance tract that would be mined to extend the life of the existing mine. The Jacobs Ranch Mine was issued a lease for a maintenance tract of Federal coal adjacent to the Jacobs Ranch Mine in 1992.

BLM has received 13 applications to lease Federal coal in the Wyoming portion of the Powder River Basin since 1990, when the Powder River Federal Coal Region was decertified. Nine new Federal coal leases have been issued, one application was rejected, and three applications, including the Belle Ayr and North Jacobs Ranch applications, are pending. Seven of the nine new leases were issued to mines in the group of five surface coal mines located immediately east and southeast of Wright, WY, in southeastern Campbell and northern Converse Counties, WY. This southern group of mines includes the Jacobs Ranch, Black Thunder, North Rochelle, Rochelle, North Antelope, and Antelope mines.

The Office of Surface Mining Reclamation and Enforcement (OSM) will be a cooperating agency in the preparation of the environmental analysis because it is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the mining plan to the Office of the Secretary of the Interior. If this maintenance tract is leased to the applicant, the new lease must be incorporated into the existing mining plans for the adjacent mine. The Secretary of the Interior must approve those mining plans before the coal in the tract can be mined.

The major issues that have been identified to date are related to the extension of ongoing site-specific and cumulative impacts to air quality, groundwater, and wildlife if these leases are issued and the potential conflicts between overlapping proposed future coal mining and existing and proposed oil and gas development in this area. If you have specific concerns about these issues, or have other concerns or issues that BLM should consider in processing one or both of these applications to lease Federal coal, please address them in writing to the above individuals or state them verbally at the October 19, 1999, public scoping meeting at the location shown above. BLM will accept written comments at the address shown above through October 30, 1999.

Freedom of Information

Scoping comments, including names and street addresses of respondents, will be available for public review at the address listed below during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: October 1, 1999.

Robert P. Henry,

Acting State Director.

[FR Doc. 99–26135 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–09–1220–00: GP9–0263]

Notice of Meeting of the Oregon Trail Interpretive Center Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, November 4, 1999 from 8 a.m. to 4 p.m. at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon. At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 12 p.m. to 12:15 p.m., November 4, 1999. Topics to be discussed are the Fee Structure, Strategy Planning, Transition of New Board Members, Vegetation Management Update and reports from Coordinators of Subcommittees.

DATES: The meeting will begin at 8 a.m. and run to 4 p.m., November 4, 1999.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, P.O. Box 987, Baker City, OR 97814, Telephone 541–523–1845.

Jerry Taylor,

Vale District Manager (Acting).

[FR Doc. 99–26126 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–99–1220–00]

Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Council will meet October 28 and 29, 1999, at the Yogo Inn in Lewistown, Montana.

The October 28 session will begin at 7 p.m. with a public comment period lasting until 7:30 p.m. The council will then discuss a management matrix involving six wilderness study areas, a national back country byway, the Nez Perce National Historic Trail, the Upper Missouri National Wild and Scenic River and adjacent BLM lands. This session will end at 9 p.m.

The October 29 session will begin at 8 a.m. The council will use the day discussing the current management and future needs of the public resource features. The council will also discuss the comments submitted concerning these features. The council will also discuss the formation of an Upper Missouri River management sub group. This session will adjourn at 4 p.m.

DATES: October 28 and 29, 1999.

LOCATION: Yogo Inn, 211 East Main Street, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Field Manager, Malta Field Office, Bureau of Land Management, 501 South 2nd Street East, Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period on October 28, as detailed above.

Dated: September 29, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–26187 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The advisory board will meet Monday, November 1, 1999, from 8 a.m. to 5 p.m. local time, and on Tuesday, November 2, 1999, from 8:00 a.m. to 12 noon local time.

Submit written comments pertaining to the advisory board meeting no later than close of business November 9, 1999.

ADDRESSES: The Advisory Board will meet at the Reno Hilton, 2500 East Second Street, Reno, Nevada, 89595.

Send written comments pertaining to the advisory board meeting to Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention Ramona Delorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147. See **SUPPLEMENTAY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Janet Nordin, Wild Horse and Burro Public Outreach Specialist, (775) 861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. Nordin at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief, Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday November 1, 1999

Old Business:
—Approval of August, 1999 minutes;
—Draft Advisory Board Report to Congress;
—Strategic plan amendment update;
—Scenarios for attaining AMLs (appropriate management levels);
—Prioritize HMAs/Establish/Attain AMLs;
—Public comment.

Tuesday, November 2, 1999

Old Business:
—Status of Palomino Valley Center;
—Broad Policy Statements/ Recommendations;
—Gelding;
—Report on Herd Areas;
—Update on Marietta Burro Range;
New Business:
—Forest Service report;
—Agenda for February, 2000 Meeting;
—Adjournment.

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal advisory committee management regulations (41 CFR 101–6.1015(b)), require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the advisory board on November 1, 1999, at the appropriate point in the agenda. This is anticipated to occur at 3:45 p.m. local time. Persons wishing to make statements should register with the BLM by noon on November 1, 1999, at the meeting location. Depending on the number of speakers, the advisory board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the advisory board meeting is not a prerequisite for submittal of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically). However, if your do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *Janet__Nordin@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: October 1, 1999.

Tom Walker,

Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 99–26128 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP9–0216; OR–53486]

Public Land Order No. 7413; Withdrawal of Public Lands for the Protection of Four Recreation Sites; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 143.32 acres of public lands from surface entry and mining for 20 years for the Bureau of Land Management to protect four recreation sites with developed

facilities. An additional 63.90 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 7, 1999.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994), but not from the mineral leasing laws, to protect four Bureau of Land Management recreation sites with developed facilities:

Willamette Meridian

Iron Mountain Gold Panning Area

T. 31 N., R.7 W.,
Sec. 4, NE¼NE¼, excluding that portion granted to the railroad under the Act of July 25, 1866 (14 Stat. 239).

Revested Oregon and California Railroad Grant Lands Island Creek Recreation Site

T. 31 N., R. 7 W.,
Sec. 1, lot 5, excluding that portion granted to the railroad under the Act of July 25, 1866 (14 Stat. 239).

Pickett Bridge Recreation Site

T. 32 N., R. 2 W.,
Sec. 23, SW¼NE¼.

Olalla-Thompson Creek Day Use Area

T. 30 S., R. 7 W.,
Sec. 5, SW¼NE¼NE¼SW¼, SE¼NW¼SW¼, and N½NE¼SW¼SW¼.

The areas described aggregate 143.32 acres in Douglas County.

2. The following described non-Federal lands, if acquired by the United States, will be subject to the terms and conditions of this withdrawal as described in paragraph 1:

Willamette Meridian

Island Creek Recreation Site

T. 30 N., R. 7 W.,
Sec. 36, S½S½S½SW¼.
T. 31 S., R. 7 W.,
Sec. 1, that portion of lot 5 granted to the railroad under the Act of July 25, 1866 (14 Stat. 239), and NW¼NW¼.
T. 31 S., R. 7 W.,
Sec. 4, that portion of the NE¼SW¼ granted as a right-of-way to the railroad under the Act of July 25, 1866 (14 Stat. 239).

The areas described aggregate 63.90 acres in Douglas County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: September 21, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–26186 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Finding of No Significant Impact and General Management Plan, Prince William Forest Park, Triangle, Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: The National Park Service has prepared and made available for public review the General Management Plan/Environmental Assessment (GMP/EA) that document's the alternatives considered for managing Prince William Forest Park. Prince William Forest Park will undertake actions to improve visitor experiences and enhance general public use of park facilities while retaining and expanding existing facilities and current patterns of use.

The Resources Management Plan has been developed to ensure long-term protection of significant resources and land protection options would be initiated to protect the Quantico Creek watershed.

The GMP/EA considered various alternatives to determine the best management strategy to ensure long-term preservation of its significant resources and to provide for the future needs of the visiting public. This plan is needed to address issues related to resource protection, visitor use and education, public awareness of the park's identity as part of the National Park system and park operations.

The Memorandum of Understanding (MOU) works toward a settlement of this land issue that will both fulfill the 1948 legislation at no cost to the Government and solve long-standing boundary and jurisdictional confusion. The MOU states that the National Park Service and U.S. Marine Corps will work together for legislation to divide the Special Use Permit (SUP) lands that were to go to Quantico in their entirety. The 1,700 acres that the park was intended to receive before transferring the lands would be carved out of the Chopawamsic lands themselves, from the land now under the SUP. The remaining acreage would be transferred to military jurisdiction, both requirements fulfilling the 1948 legislation. The two parties will establish a ''green corridor'' along the federally owned portion of state Route 619 to enhance its integrity as a scenic, two-lane, low speed roadway. Revisions will be made to the current Watershed Management Plan of Upper Quantico Creek and serve as the model for format and substance of the plan to be established for the Chopawamsic Creek Watershed Management Plan.

The visitor use strategy under the Resources Management Plan would reduce or eliminate impacts on the natural environment through more effective visitor dispersal and increased visitor awareness. Rehabilitation and maintenance of park dams will preserve the park's primary wetland habitat. Management options and temporary modifications at Cabin Camp 3 will be explored.

After reviewing the comments on the GMP/EA for Prince William Forest Park, the National Park Service has adopted the preferred alternative, Alternative A, adoption of the Resources Management Plan. The implementation of the preferred alternative, as described, would not constitute major Federal action that would have significant impact on the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy act of 1969. Accordingly, the preparation of an environmental impact statement will not be required.

SUPPLEMENTARY INFORMATION: Requests for copies of the GMP/EA, or for any additional information, should be directed to: Robert Hickman, Superintendent, Prince William Forest Park, 18100 Park Headquarters, Triangle, Virginia 22172; or by calling (703) 221–4706.

Dated: September 30, 1999.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 99–25966 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Correction

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Reclamation published a document in the **Federal Register** on October 1, 1999, concerning the announcement of an upcoming public meeting of the Colorado River Basin Salinity Control Advisory Council in San Francisco, California. The document contained an incorrect location for the public meeting.

FOR FURTHER INFORMATION CONTACT: David Trueman, Colorado River Salinity Control Program Manager, Bureau of Reclamation, (801) 524–3753.

Correction

In the **Federal Register** of October 1, 1999, in FR Doc. 99–25476, on page 53408, in the third column, correct the third sentence under **DATES AND LOCATIONS** to read as follows:

The meeting will be held at the Environmental Protection Agency Building at 75 Hawthorne Street, San Francisco, California.

Dated: October 1, 1999.

Erica Petacchi,

Federal Register Liaison.

[FR Doc. 99–26117 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement and to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee called the Glen Canyon Adaptive Management Work Group, a technical work group, a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provide technical advice and information for the AMWG to act upon.

DATES AND LOCATION: The Glen Canyon Adaptive Management Work Group will conduct two (2) open public meetings as follows:

Phoenix, Arizona—October 21, 1999. The meeting will begin at 9:30 a.m. and conclude at 4 p.m. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and AMP goals, and review the budget format, ad hoc group reports, and Fiscal Year 1999 annual report to Congress.

Phoenix, Arizona—January 20–21, 2000. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at 12 noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and discuss the following: AMP strategic plan, organization location of the Grand Canyon Monitoring and Research Center (GCMRC), status of filling the GCMRC director position, tribal participation update, flood avoidance activities, programmatic agreement five-year budget, National Research Council report, Kanab ambersnail workshop, GCMRC report on activities, Fiscal Year 2001 budget and work plans, State of Natural and Cultural Resources in the Colorado River Ecosystem report, experimental flow regimes, status of the temperature control device, GCMRC Fiscal Year 1999 contract reports summary, 2001 budget, environmental compliance issues, and basin hydrology.

DATES AND LOCATIONS: The Glen Canyon Technical Work Group will conduct three (3) open public meetings as follows:

Phoenix, Arizona—October 22, 1999. The meeting will begin at 8 a.m. and conclude at 3 p.m. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and discuss the AMP goals, budget format, ad hoc group report, and review the Fiscal Year 1999 annual report to Congress.

Phoenix, Arizona—December 8–9, 1999. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at 3 p.m. on the second day. The meeting will be held at the Arizona Department of Water Resources Office, Conference Room A (3rd Floor), 500 North 3rd Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and discuss the AMP goals, budget format, ad hoc group report, 2001 budget and work plans, environmental compliance issues, State of Natural and Cultural Resources in the Colorado River Ecosystem report, basin hydrology, experimental flow regimes, temperature control device workshop report, and recommend the Fiscal Year 1999 annual report to Congress.

Phoenix, Arizona—January 19 and 21, 2000. The meeting will begin at 1 p.m. and conclude at 4 p.m. on the first day and begin at 1 p.m. and conclude at 3:00 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A and B (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues, discuss the agenda for the AMWG meeting to be held on January 20, 2000, and discuss the process to review management objectives and information needs. In addition, the following items will be discussed: Tribal participation update, Kanab ambersnail workshop, GCMRC Request for Proposal status, Lake Powell plan, Fiscal Year 2001 budget, Fiscal Year 2000 annual plan, GCMRC Fiscal Year 1999 contract reports summary, experimental flows ad hoc report, status of pit tag data files, temperature control device status report, programmatic compliance, strategic plan, basin hydrology, and assignments from AMWG meetings.

Agenda items may be revised prior to any of the meetings. Final agendas will be posted 15 days in advance of each meeting and can be found at the following Internet site: http://www.uc.usbr.gov/amp/. Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings.

To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room

6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG and AMWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov.

Dated: October 1, 1999.

Eluid L. Martinez,

Commissioner.

[FR Doc. 99–26118 Filed 10–6–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35), requesting extension of a currently approved collection: USITC Reader Satisfaction Survey (OMB No.: 3117–0188).

EFFECTIVE DATE: October 1, 1999.

PURPOSE OF INFORMATION COLLECTION: The requested extension of a currently approved collection (one-page survey) is for use by the Commission, and complies with objectives set forth in the Government Performance and Results Act of 1993 (Pub. L. 103–62), to establish measures to improve information on program performance, and specifically, to focus on evaluating results, quality, and customer satisfaction. The one-page survey will be placed inside the cover of certain public reports issued annually or on occasion by the Commission pursuant to section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), and including public reports that meet agency requirements for the USITC Research Program.

PUBLIC COMMENTS REGARDING THE INFORMATION COLLECTION: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received at OMB by the Desk Officer/USITC within 30 days of publication of this notice in the **Federal Register**.

Summary of Proposal

(1) Number of forms submitted: one.

(2) Title of form: USITC Reader Satisfaction Survey.

(3) Type of request: extension of a currently approved collection.

(4) Frequency of use: annual or on occasion information gathering.

(5) Description of Respondents: Interested parties receiving most all public reports issued by the USITC, with the exception of Title VII reports.

(6) Estimated number of respondents: 1,500 annually.

(7) Estimated total number of hours to complete the forms: 375 hours annually.

(8) Response burden: less than 15 minutes for each individual respondent.

(9) Information requested on a voluntary basis is not proprietary in nature, but rather for program evaluation purposes and is not intended to be published. Commission treatment of questionnaire responses will be followed; responses will be aggregated and will not be presented in a manner that will reveal the individual parties that supplied the information.

FOR FURTHER INFORMATION CONTACT: Copies of the public notice (Agency Form Submitted for OMB Review) along with the survey and Supporting Statement to be submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at http://www.usitc.gov/whatsnew.htm or the agency submissions to OMB in connection with this request may be obtained from Larry Brookhart, Office of Industries, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3418). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–3897). Copies of any comments should also be provided to Robert Rogowsky, Director of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

Issued: October 1, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–26190 Filed 10–6–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting: Emergency Notice of Cancellation and Rescheduling of Commission Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

ORIGINAL TIME AND DATE: October 5, 1999 at 11 a.m.

NEW DATE AND TIME: Not later than January 12, 2000 (see below).

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436; Telephone: (202) 205–2000.

STATUS: Open to the public.

Under 19 CFR § 201.35(c)(1), the Commission determined to cancel and reschedule the meeting of Tuesday, October 5, 1999 at 11:00 a.m. Seven (7) days notice was not possible.

The Commission has further determined, pursuant to 19 U.S.C. 1675(c)(5)(C)(v)), to reschedule the meeting to consider these reviews to the earlier of ten (10) calendar days following the date on which the Presidential Proclamation concerning Investigation No. TA–201–69, Certain Steel Wire Rod, is published in the **Federal Register** or not later than January 12, 2000. Parties to the reviews may file supplementary final comments, limited to the implications of the Presidential Proclamation in Investigation No. TA–201–69 for the Commission's determinations in these reviews, by no later than five (5) calendar days preceding the meeting date.

A further notice will announce the date and time of the rescheduled meeting.

Issued: October 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–26327 Filed 10–5–99; 2:43 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 13, 1999 at 11 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–125–126 (Review)(Potassium Permanganate from China and Spain)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on October 27, 1999.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–26328 Filed 10–5–99; 2:43 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: new collection; bringing the crime victim into community policing.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by October 15, 1999. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202/395–7316, Department of Justice Desk Officer, Washington, DC 20530. You may also submit comments to Ms. Bond via facsimile at 202/395–6974.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until December 6, 1999. During the 60-day regular review all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the COPS Office, Administration Division, COPS Office, U.S. Department of Justice, 1100 Vermont Avenue, NW, Washington, DC 20530; attn: Sarah Hosemann. Comments also may be submitted to the COPS Office via facsimile to 202–514–2852; attn: Sarah Hosemann. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Overview of this information collection:

(1) *Type of Information Collection:* New collection.

Title of the Form/Collection: Bringing the Victim Into Community Policing: Surveys for Police Executives and Victims' Organizations.

(2) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 33/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(3) *Affected public who will be asked or required to respond, as well as a brief abstract:* Representatives from victims' organizations and policing agencies will be asked to respond. The survey of Police Executives will focus on police agencies that have a responsibility for providing services to a residential population. The sample will be selected from municipal and county police departments with ten or more full-time officers. The sample derived from Victim's Organizations will be selected from organizations located in the same communities as the policing sample.

As a way to further its mandate to promote community policing, the COPS Office is interested in learning about the relationships that have developed between policing agencies and organizations that represent the needs and interests of victims of crime. Community policing has played an important role in sensitizing police agencies to the needs of victims of crime. However, victims are not generally viewed as potential resources or potential partners in crime control and order maintenance. Similarly, victims' organizations have not looked to police departments as partners in reducing victimization or strengthening the role of the victim in the investigations of crime, crime prevention, and community safety. More information is needed to explore ways of improving victims' confidence in police; establishing healthy partnerships between the police, victims, and victims' organizations; as well as promoting public safety. The surveys for victims' organizations and police executives will help establish a baseline of current policies and practices regarding the development of partnerships between these agencies.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by phone with 500 representatives from organizations for victims of crime and 500 police executives for a total sample of 1,000 respondents. Phone administration and preparation will take approximately one hour per survey.

(5) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 1,000 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania, NW, Washington, DC 20530.

Dated: October 1, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–26146 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a consent decree in *United States and State of Maryland* v. *Mayor and City Council of Baltimore*, Civil Action No. 97–4185 (D. Md) was lodged with the court on September 29, 1999.

The proposed decree resolves claims of the United States and State of Maryland against the Mayor and City Council of Baltimore under section 309(b) and (d) of the Clean Water Act (the ''Act'' or ''CWA''), 33 U.S.C. 1319(b) and (d), for violations of National Pollutant Discharge Elimination System (''NPDES'') permits issued to the City of Baltimore's Ashburton Water Filtration Plant and Patapsco Wastewater Treatment Plant. In the decree, Baltimore agrees to pay a total civil penalty of $1 million, perform Supplemental Environmental Projects valued at $2.5 million, and implement necessary injunctive relief at both plants.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Maryland* v. *Mayor and City Council of Baltimore*, Civil Action No. 97–4185 (D. Md.), DOJ Ref. #90–5–1–1–4402.

The proposed consent decree may be examined at the Office of United States Attorney, District of Maryland, United States Courthouse, 101 West Lombard Street, 6th Floor, Baltimore, MD 21201, (410) 209–4800. A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, PO Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $19.50 (25 cents per page reproduction costs, excluding attachments), payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–26107 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on September 21, 1999, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc. and Exide Corporation*, Civil Action No. 3:99–CV–2140–T, was lodged with the United States District Court for the Northern District of Texas, Dallas Division. The proposed Consent Decree resolves the liability of Exide Corporation under Sections 106 and 107 of CERCLA at the RSR Superfund Site (''Site'') located in Dallas, Texas. Under the terms of the Consent Decree, Exide Corporation has agreed to pay $450,000 for reimbursement of response costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Exide Corporation*, DOJ #90–11–3–1613/1.

The proposed Consent Decree may be examined at the offices of the United States Attorney for the Northern District of Texas, Dallas Division, 1100 Commerce St., 3rd Floor, Dallas, Texas 75242–16996, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Mike Barra, Assistant Regional Counsel). A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $6.00 (25 cents per page reproduction charge for decree, payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *Exide Corporation*, DOJ #90–11–3–1613/1.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–26176 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Department policy at 28 CFR 50.7, notice is hereby given that on September 21, 1999, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc., and Exide Corporation*, Civil Action No. 3:99–CV–2140–T, was lodged with the United States District Court for the Northern District of Texas, Dallas Division. The proposed Consent Decree resolves the liability of Eagle-Picher Industries, Inc. under Sections 106 and 107 of CERCLA at the RSR Superfund Site (''Site'') located in Dallas, Texas. Under the terms of the Consent Decree, Eagle-Picher has agreed to an Allowed Environmental Claim in its Chapter 11 Bankruptcy proceeding for the United States in the amount of $2.1 million. For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc., et al.*, DOJ #90–11–3–1613/2.

The proposed consent decree may be examined at the offices of the United States Attorney for the Northern District of Texas, Dallas Division, 1100 Commerce St., 3rd Floor, Dallas, Texas, 75242–16996, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Mike Barra, Assistant Regional Counsel). A copy of the consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such request should be accompanied by a check in the amount of $6.00 (25 cents per page reproduction charge for decree, payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *Eagle-Picher Industries, Inc., et al.*, DOJ #90–11–3–1613/2.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–26177 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Under the Clean Water Act as Amended by the Oil Pollution Act

Under 28 CFR 50.7 notice is hereby given that on September 28, 1999, a proposed Consent Decree in *United States and State of Louisiana* v. *Equilon Pipeline Company LLC,* Civil Action No. 99–2961, was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States on behalf of the National Oceanic Atmospheric Administration, the Department of Interior's Fish and Wildlife Service, and the Coast Guard; and the State of Louisiana on behalf of the Louisiana Oil Spill Coordinator, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources, sought recovery of natural resource damages, removal costs, and other expenses arising out of the May 16, 1997, discharge of oil from a pipeline located in Lake Barre, Terrebonne Parish, Louisiana. The proposed Consent Decree provides that Equilon Pipeline Company LLC, successor corporation to Texaco Pipeline Inc. by way of merger, will perform a restoration project consisting of planting marsh grasses on East Timbalier Island and will pay state response costs and past state and federal assessment costs amounting to approximately $480,000. Equilon also will pay future assessment and restoration costs to the state and federal agencies.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Louisiana* v. *Equilon Pipeline Company LLC,* D.J. Ref. 90–5–1–1–06628.

The Consent Decree may be examined at the Office of the United States Attorney, 501 Magazine Street, Suite 210, New Orleans, Louisiana and at the Louisiana Oil Spill Coordinator's Office, 625 North 4th Street, Suite 800, Baton Rouge, Louisiana. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $42.50 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy exclusive of exhibits, *i.e.,* without the: (1) Final Damage Assessment and Restoration Plan, (2) Grant of Particular Use for Construction, and (3) Monitoring Plan, please enclose check in the amount of $17.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–26108 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act, Oil Pollution Act, and the National Marine Sanctuaries Act

Notice is hereby given that on September 27, 1999, a proposed Consent Decree in *United States* v. *Pearl Shipping Company, et al.,* Civil Action No. 994359SBA was lodged with the United States District Court for the Northern District of California.

In this action, the United States sought Civil penalties, response costs, and natural resource damages for discharges of oil from the tanker vessel M/T Command into the San Francisco Bay and the Pacific Ocean. The M/T Command is owned by defendant Pearl Shipping Company and operated by defendant Anax International Agencies, Inc. The State of Calfironia is also a co-plaintiff with the United States and has brought claims for civil penalties, natural resource damages, response costs, and other damages. The Consent Decree resolves the claims of the United States and the State of California. Under the Decree, the defendants will pay $4.05 million in natural resource damages, including damage assessment costs, under the Clean Water Act, 33 U.S.C. 1321, the Oil Pollution Act, 33 U.S.C. 2702, 2706, and National Marine Sanctuaries Act, 16 U.S.C. 1443; $196,200 in civil penalties for violations of the National Marine Sanctuaries Act, 16 U.S.C. 1437; $1,181,800 in civil penalties, response costs, and other damages to the State of California; and $90,000 to the County of San Mateo to settle claims of the County. The Consent Decree also includes a fleet-wide Corporate Compliance Program to be implemented by the defendants to prevent future spills.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *Untied States* v. *Pearl Shipping Company, et al.,* D.J. Ref. No. 90–5–1–1–06455.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, 11th Floor, San Francisco, California 94102, (415) 436–7200, and at the Consent Decree Library, 1425 New York Avenue, 13th Floor, Washington, DC 20005, (202) 514–1547. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–26178 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Second Amendment to the Consent Decree in *United States of America and the State of New Hampshire* v. *City of Somersworth, et al.,* Civil No. C–96–46–SD (D.N.H.), was lodge with the United States District Court for the District of New Hampshire on September 29, 1999. The proposed Second Amendment concerns alleged liability of the United States and State of New Hampshire, based on actions by the New Hampshire National Guard, pursuant to sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607, 9613, regarding response actions by the City of Somersworth and the General Electric Company at the Somersworth Sanitary Landfill Superfund Site (''Site'') in Somersworth, New Hampshire.

The proposed Second Amendment to the Consent Decree would resolve any potential liability which the New Hampshire National Guard may have at the Site which may be attributable to the United States by requiring the United States to pay $2,340.30 to the EPA Hazardous Substances Superfund and $13,261.70 to the City of Somersworth

and the General Electric Company in reimbursement for past and future response costs at the Site. The State of New Hampshire will make identical payments to resolve any potential liability which the New Hampshire National Guard may have at the Site which may be attributable to the State.

The U.S. Department of Justice will receive written comments relating to the proposed Second Amendment to the Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Harry M. Hughes, Trial Attorney, U.S. Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986 and should refer to *United States of America and the State of New Hampshire* v. *City of Somersworth, et al.,* Civil No. C–96–46–SD (D.N.H.), DJ# 90–11–6–05509.

The proposed Second Amendment to the Consent Decree may be examined at the Clerk's Office, United States District Court for the District of New Hampshire, 55 Pleasant Street, room 110 Concord, New Hampshire 03301–3941 and at the Region I office of the Environmental Protection Agency, 1 Congress Street, suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $6.25 payable to the ''Consent Decree Library.''

Letitia Grishaw,

Chief, Environmental Defense Section, Environmental and Natural Resources Division, Department of Justice.

[FR Doc. 99–26106 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—General Motors and Toyota Joint Research and Development Project

Notice is hereby given that, on May 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), General Motors and Toyota Joint Research and Development Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are General Motors Corporation, Detroit, MI; and Toyota Motor Corporation, Toyota, JAPAN. The nature and objectives of the venture are to cooperate on research and development related to certain advanced vehicle technology to permit them to respond effectively and promptly to customer and regulatory requirements. The goals of the joint venture are to: Develop advanced vehicle technology superior to those which either company could do alone, including electric, hybrid electric and fuel cell vehicles or their components and systems; reduce development time for such new technology vehicles and components; increase industry responsiveness to customer needs and regulatory requirements for more efficient, cleaner vehicles; accelerate necessary changes in infrastructure to support advanced technology vehicles; provide regulators, globally, with timely, consistent information and advice about advanced vehicle technology; and promote early standardization where needed to provide global customers with the desired interchangeability for advanced vehicles and components.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26181 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Multiservice Switching Forum

Notice is hereby given that, on April 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Multiservice Switching Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bosch Telecommunications, Stuttgart, GERMANY; Data Connection Ltd., Enfield, UNITED KINGDOM; IBM, Armonk NY; Marconi Communications, New Century Park, Coventry, UNITED KINGDOM; Mariner Networks Inc., Anaheim, CA; Mitel, Kanata, Ontario, CANADA; Motorola, Mansfield, MA; NET, Fremont, CA; Net Insight, Stockholm, SWEDEN; Nokia Telecommunications, Helsinki, FINLAND; NTT Corporation, Tokyo, JAPAN; Oresis Communications, Beaverton, OR; Samsung Telecom, Seoul, KOREA; Telefonic de Espana, Madrid, SPAIN; Tellabs, Lisle, IL; Trillium, Los Angeles, CA; and Xbind, New York, NY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Multiservice Switching Forum intends to file additional written notification disclosing all changes in membership.

On January 22, 1999, Multiservice Switching Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26180 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Industrial Information Infrastructure Protocols Solutions for Manufacturing—Adaptable Replicable Technology

Notice is hereby given that, on April 27, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Industrial Information Infrastructure Protocols Solutions for Manufacturing—Adaptable Replicable Technology (NIIIP–SMART) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Schneider Automation

Inc., North Andover, MA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NIIIP–SMART intends to file additional written notification disclosing all changes in membership.

On May 1, 1996, NIIIP–SMART filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 29, 1997 (62 FR 23268).

The last notification was filed with the Department on November 19, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1998 (63 FR 5970).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26179 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on May 6, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Okamura Corporation, Yokohama Kanagawa, JAPAN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on February 8, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26183 Filed 10–6–99 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Seagate Technology, Inc., Advanced Research Corporation, Imation Corp., and Peregrine Recording Technology, Inc.

Notice is hereby given that, on January 7, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Seagate Technology, Inc., Advanced Research Corporation, Imation Corp., and Peregrine Recording Technology, Inc., have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Seagate Technology, Inc., Santa Maria, CA; Advanced Research Corporation, Minneapolis, MN; Imation Corp., Oakdale, MN; and Peregrine Recording Technology, Inc., St. Paul, MN. The nature and objectives of the venture are to develop technologies for a small, reliable, low cost, high-bandwidth, high-capacity, fast access tape recorder and cartridge media.

The planned joint activity was begun under a joint research and development venture entered into on September 15, 1995 between Minnesota Mining and Manufacturing Company (3M), Seagate Tape Technology, Inc., and Advanced Research Corporation (60 FR 62260).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26182 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the SNP Consortium Ltd. (''TSC'')

Notice is hereby given that, on April 21, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The SNP Consortium Ltd. (''TSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Bayer Corporation, Tarrytown, NY; Bristol-Myers Squibb Company, Princeton, NJ; Glaxo Wellcome Inc., Research Triangle Park, NJ; Hoechst Marion Roussel Inc., Bridgewater, NJ; Hoffmann-La Roche Inc., Nutley, NJ; Monsanto Company, St. Louis, MO; Novartis Pharmaceuticals Corporation, East Hanover, NJ; Pfizer Inc., New York, NY; SmithKline Beecham Corporation, Philadelphia, PA; The Wellcome Trust Limited, as trustee of the Wellcome Trust, London, England; and Zeneca Inc., Wilmington, DE. The nature and objectives of the venture are to carry on scientific research in the public interest, including research intended to advance the field of human medicine by creating a single nucleotide polymorphism (''SNP'') map on the human genome, that will then be made freely available to the public on a nondiscriminatory basis. The joint venture will enable TSC to create a high-density, high-quality SNP map with shared financial risk and without the duplication of effort that would result from the work of individual members. As the SNP map is being constructed, it will be placed in the public domain for use by the worldwide medical research community in identifying specific genes involved in various diseases, thereby facilitating downstream research and development of therapeutic, diagnostic and pharmaceutical products.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–26184 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Request OMB emergency approval; H–1B data collection and filing fee exemption.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by October 15, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503 before October 15, 1999. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the pubic and affected agencies concerning this information collection. Comments are encouraged and will be accepted until December 6, 1999. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 435 I Street, NW., Washington, DC 20536. Written comments and suggestions from the pubic and affected agencies concerning the proposed collection of information should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* H–1B Data Collection and Filing Fee Exemption.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129W. Adjudications Division, Immigration and Naturalization Service.

4. *Affected pubic who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This addendum to Form I–129 will be used by the INS to determine if an H–1B petitioner is exempt from the additional filing fee of $500, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 190,000 responses at 30 minutes per response.

6. *An estimate of the total pubic burden (in hours) associated with the collection:* 95,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–26132 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities Proposed Collection; Comment Request

ACTION: Notice of information collection under review; (New collection); Generic clearance of customer satisfaction surveys.

The following agencies have submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995: The Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP). Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 15, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 8, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Writen comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comment may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Generic clearance for Customer Satisfaction surveys.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students.

The Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Justice Programs (OJB), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP), in accordance with the requirements of E.O. 12862 and the GPRA, wish to conduct customer satisfaction surveys. The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be a maximum of 2,500 respondents per mail survey; 1,500 respondents per email survey; and 3,000 respondents per World Wide Web survey. it is estimated that each survey will take between 3 to 18 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to complete a mail survey is 750 hours; the email survey is 300 hours; and the World Wide Web surveys 600 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, or via facsimile at (202) 616–1167.

Dated: October 1, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 99–26147 Filed 10–6–99; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (Pub. L. 94–409).

QUARTERLY MEETING DATES: November 15–16, 1999, 8:30 a.m. to 5 p.m.

LOCATION: Baltimore Marriott Inner Harbor, 110 South Eutaw Street, Baltimore, Maryland; 410–962–0202.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050 Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent Federal agency composed of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities and to achieve economic self-sufficiency, independent living, and including and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or aonther accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of our room. Smoking is prohibited in the meeting room and surrounding area;.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC on October 5, 1999.

Ethel D. Briggs,

Executive Director.

[FR Doc. 99–26414 Filed 10–5–99; 3:56 pm]

BILLING CODE 6820–MA–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pubic Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by November 5, 1999. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas (formerly called Specially Protected Areas and Sites of Special Scientific Interest).

The applications received are as follows:

1. *Applicant:* Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5269.

Permit Application No.: 2000–015.

Activity for Which Permit Is Requested: Take, and Import into the U.S.A.

The applicant proposes to conduct tagging studies of humpback whales, blue whales, and fin whales along the Antarctic Peninsula. The applicant proposes to apply Argos satellite-monitored radio tags to approximately 24 humpback whales annually, and if the opportunity arises, 5 each of blue and fin whales. The objectives of the proposed research are to: (1) Track whale movements within their feeding habitat during the austral summer; (2) examine the relationship between these movements and prey distribution, as well as physical and biological oceanographic conditions; and, (3) identify migration routes from their summer feeding grounds in the Antarctic Peninsula region to their winter breeding and calving areas.

The applicant also proposes to conduct biopsy sampling of all tagged whales for sex determination and genetic analysis. The samples will be collected and returned to the U.S. for final analysis.

Location: Antarctic Peninsula Region.

Date: January 01, 2000 to January 01, 2004.

2. *Applicant:* Philip R. Kyle, E&ES Department, New Mexico Tech, Socorro, NM 87801.

Permit Application No.: 2000–016.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Area.

The applicant proposes to enter Antarctic Specially Protected Area No. 130, Tramway Ridge, Mt. Erebus, Ross Island, to measure the temperature of the soil as a means of monitoring the volcanic activity of Mount Erebus. In addition, the applicant wishes to measure the quantity of CO^2 in the soil and its rate of flux into the atmosphere. This will provide information on the degassing behavior of the magmata system underlying Mount Erebus.

Location: Tramway Ridge, Mt. Erebus, Ross Island (ASPA #130).

Dates: December 01–30, 1999.

3. *Applicant:* Bess B. Ward, Geosciences Department, M–51 Guyot Hall, Washington Road, Princeton University, Princeton, NJ 08544.

Permit Application No.: 2000–017.

Activity for Which Permit Is Requested: Introduction of a non-indigenous species.

The applicant proposes to measure denitrification raters at Lake Bonney, by performing positive control experiments using cultures of bacteria originally isolated from the lake during the 1992–93 season. The original samples were purified and characterized in the laboratory. During the intervening time since collection, the cultures were stored at −70°C, except when grown for experiments. The applicant plans to initiate new transfers from the frozen stock to produce inoculate to be used in the Crary Lab at McMurdo Station. There is a slight chance that the original organism may have changed during the prolonged culture/storage period, such that returning them to Antarctica may constitute introduction of a non-indigenous species. The isolates will be used in experiments carried out in solely in Crary Lab. After use, the cultures and any contaminated containers will be autoclaved and discarded as appropriate.

Location: Crary Science and Engineering Center, McMurdo Station, Antarctica.

Dates: November 01, 1999–December 15, 1999.

4. *Applicant:* Brenda Hall, University of Maine, Orono, ME 04469–5790.

Permit Application No.: 2000–018.

Activity for Which Permit Is Requested: Enter Antarctic Specially Protected Area.

The applicant is currently studying the lake-level changes in the Dry Valley region of Antarctica.

As a result, they have discovered that over the past 30,000 years, the Dry Valleys have been repeatedly filled with large lakes that were up to 400m deeper than the present lakes. The applicant plans to document evidence of past lake-level fluctuations and developing an accurate chronology. There has been very little work done in the Barwick Valley, which was last mapped in the 1960's and then only at a reconnaissance level. The applicants mapping reconnaissance over the past few years led to the identification of widespread lacustrine deposits, including small deltas with datable organic material. The applicant proposes to enter the Barwick Valley Special Site of Scientific Interest No. 123 to continuing the mapping program and to collect a few samples of evaporates and, if present, algae, from key lacurstirne deposits for radiocarbon and uranium-thorium dating. The applicant will sample an area of about 10 cm × 10 cm and replace all surface material (gravel, artifacts) that might be disturbed.

Location: Barwick Valley, Victoria Land.

Dates: November 01 to December 31, 1999.

5. *Applicant:* Donal T. Manahan, Biological Sciences, University of Southern California, Los Angeles, CA 90089–0371.

Permit Applicant No.: 2000–019.

Activity for Which Permit Is Requested: Introduce Non-indigenous Species into Antarctica.

The applicant proposes to bring bacterial cultures of *E. coli* to Antarctica as a component of several molecular biology DNA cloning kits that will be used by the Integrative Biology course at McMurdo Station. *E. coli* will be used to replicate DNA during gene cloning. The bacterial stocks will be transported on dry ice, along with other kit reagents. All experiments will be conducted in the Crary Science and Engineering Center at McMurdo Station, Antarctica. Immediately after conducting experiments using E. coli cultures, all media and materials will be sterilized by autoclaving. Standard P–2 containment guidelines will be strictly followed for the subsequent disposal of all materials and supplies. All *E. coli* cultures will be sterilized and killed at the end of the season.

Location: McMurdo Station, Antarctica.

Dates: December 20, 1999 to February 20, 2000.

6. *Applicant:* Gerald L. Kooyman, Scholander Hall, Rm. 0204, University of California, San Diego, La Jolla, CA 92093.

Permit Application No.: 2000–020.

Activity for Which Permit Is Requested: Taking.

The applicant proposes to continue seabird research during the Antarctic Pack Ice Seals cruise in the eastern Ross and Amundsen Seas. The objectives are to: (1) Survey bird molt habitat and determine bird density; (2) conduct bird counts for general distribution and density from line transects along the route of the ship, and from helicopter survey tracks; (3) determine prey type from stomach samples collected from approximately 20 birds; (4) determine foraging behavior by attaching TDR's to Emperor penguins, then recovering the TDR's using VHF locating transmitters; and (5) attach Platform Transmitter Terminals (PTT) to approximately 10 birds to obtain tracks of post-molt birds. In order to achieve objectives 3, 4 and 5, up to 20 Emperor penguins will be captured, then released.

Diet studies of large penguins that range widely are usually accomplished after a long journey back to the colony. This will be one of the few, if not the only, study to conduct a diet analysis at the foraging site concurrent with a study of prey distribution and abundance. Also, Emperor penguins have never been tracked from the molt area back to the colony to determine the favored foraging areas. As one of the most important top predators in the Ross Sea, this information will be valuable for an ecosystem analysis of the Ross Sea.

Location: Ross and Amundsen Seas pack ice.

Dates: December 15, 1999 to April 01, 2000.

7. *Applicant:* John L. Bengtson, National Marine Mammal Laboratory, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, N.E., Seattle, WA 98115.

Permit Application No.: 2000–021.

Activity for Which Permit Is Requested: Taking; Import into the U.S. and Export from the U.S.

The applicant is a participant in the Antarctic Pack Ice Seals project that consists of penniped studies in the circumpolar pack ice zone and land-based studies at selected sites around the continent. A primary objective is to study the feeding ecology, seasonal movements, diving patterns, reproduction, and population dynamics of Antarctic seals and to examine their role in the marine ecosystem.

The applicant plans to capture and release up to 500 Crabeater seals, 300 Leopard and Weddell seals, and 100 Ross, Antarctic fur and Southern elephant seals for purposes of attaching time-depth recorders and radio transmitters to monitor their feeding and diving behavior. In addition, selected individuals may be tagged to assist in identification and to monitor migrations. Seals will also be marked, weighed, measured, and tissue samples collected. Tissue specimens may also be collected form dead seals. Aerial surveys will be conducted to assess the abundance and distribution of pinnipeds in various habitats. To optimize the use of specimen materials collected, the applicant proposes to exchange specimens with researchers in various countries. The collected materials will be imported into the U.S., then exported to collaborating investigators in other countries.

Location: Circumpolar pack ice areas.

Dates: January 01, 2000 to December 31, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 99–26164 Filed 10–6–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341]

Detroit Edison Company; Fermi 2; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 134 to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (the licensee), for operation of Fermi 2, located in Monroe County, Michigan.

The amendment is effective as of the date of issuance and shall be implemented within 90 days. The implementation of the amendment includes two license conditions that are being added to Section 2.C of the operating license as part of the amendment.

The amendment replaces, in its entirety, the current Technical Specifications (TSs) with a set of improved TSs based on (1) NUREG–1433, ''Standard Technical Specifications, General Electric Plants BWR/4,'' Revision 1, dated April 1995, including subsequent approved changes to the standard TSs, (2) guidance provided in the Commission's ''Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors,'' published on July 22, 1993 (58 FR 39132), and (3) 10 CFR 50.36, ''Technical Specifications,'' as amended July 19, 1995 (60 FR 36953). In addition, the amendment added two license conditions to Section 2.C of the operating license that (1) require the relocation of certain current TS requirements into licensee-controlled documents, and (2) provide the schedule for the first performance of surveillance requirements that are new or revised in the amendment.

The application for the amendment, as supplemented, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on August 10, 1999 (64 FR 43408). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment beyond that described in the Final Environmental Statement related to the operation of Fermi 2 dated August 1981, and in the addendum to the Final Environmental Statement dated March 1982. The Environmental Assessment was published in the **Federal Register** on September 30, 1999 (64 FR 52800).

For further details with respect to the action, see (1) the application for amendment dated April 3, 1998, as supplemented by letters dated September 28, October 19, and December 10, 1998, and January 8, January 26, February 24, March 30, April 8, April 30, May 7, June 2, June 24, June 30, July 7, July 13, July 26, August 4, August 17, August 25, and September 8, 1999, (2) Amendment No. 134 to License No. NPF–43, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Dated at Rockville, Maryland, this 30th day of September 1999.

For the Nuclear Regulatory Commission.

Andrew J. Kugler,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26142 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

Duquesne Light Co., Firstenergy Nuclear Operating Co., Pennsylvania Power Co., (Beaver Valley Power Station, Units 1 and 2), Order Approving Transfer of Licenses and Conforming Amendments

I

The Duquesne Light Company (DLC), Ohio Edison Company, and Pennsylvania Power Company (Penn Power) are the licensees of the Beaver Valley Power Station, Unit 1 (BVPS–1). DLC, Ohio Edison Company, The Cleveland Electric Illuminating Company (CEI), and Toledo Edison Company are the licensees of the Beaver Valley Power Station, Unit 2 (BVPS–2). DLC acts as agent for the licensees and has exclusive responsibility for, and control over, the physical construction, operation, and maintenance of BVPS–1 and BVPS–2 as reflected in Operating Licenses Nos. DPR–66 and NPF–73. With the exception of DLC, Penn Power and each of the remaining licensees are wholly owned subsidiaries of FirstEnergy Corporation (FE). The U.S. Nuclear Regulatory Commission (NRC) issued Operating License No. DPR–66 on July 2, 1976, and Operating License No. NPF–73 on August 14, 1987, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Beaver County, Pennsylvania.

II

Under cover of a letter dated May 5, 1999, DLC and FirstEnergy Nuclear Operating Company (FENOC), acting for itself and on behalf of Penn Power, jointly submitted an application requesting license transfer approvals with respect to Operating Licenses DPR–66 and NPF–73 in connection with the proposed transfer of DLC's 47.5-percent ownership interest in BVPS–1 and DLC's 13.74-percent ownership interest in BVPS–2 to Penn Power; approval of the transfer of DLC's operating authority under licenses to FENOC; and approval of conforming amendments to reflect the transfers. Supplemental information was provided by DLC under cover of letters dated June 22 and July 30, 1999 (collectively with the application of May 5, 1999, referred to hereinafter as the ''application'').

No physical changes will be made to BVPS–1 or BVPS–2 as a result of the proposed transfers, and there will be no significant change in the operations of BVPS–1 or BVPS–2, according to the application. FENOC would become the agent for the joint owners of the facility and would have exclusive responsibility for the management, operation, maintenance, and eventual decommissioning of BVPS–1 and BVPS–2. The conforming amendments would remove DLC from the facility operating licenses, reflect Penn Power as a co-owner of BVPS–2, and indicate that FENOC is the authorized operator of BVPS–1 and BVPS–2.

Approval of the proposed license transfers and conforming license amendments was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on June 14, 1999 (64 FR 31880). Before such notice was published, the Commission received a Petition to Intervene dated June 3, 1999, from Local 29, International Brotherhood of Electrical Workers (Local 29). DLC and FE each filed an answer to the petition on June 16, 1999. Local 29 filed its reply to the DLC and FE answers on June 23, 1999, requesting that the Commission deny the DLC and FE answers and grant Local 29's Petition to Intervene as of right. The Commission issued a Memorandum and Order [1] on July 23, 1999, denying Local 29's Petition to Intervene and referred Local 29's comments to the NRC staff for consideration during review of the license transfer application. Subsequently, on September 15, 1999, Local 29 filed a Petition to Waive Time Limits in 10 CFR 2.1305 and Supplemental Comments. FE filed an answer to this second petition on September 21, 1999, and DLC filed an answer on September 23, 1999. The Commission issued a Memorandum and Order [2] on September 24, 1999, which granted Local 29 a waiver of the 10 CFR 2.1305 time limits for filing comments and referred Local 29's comments to the NRC staff for consideration during review of the license transfer application. Local 29's comments are addressed in the staff's safety evaluation dated September 30, 1999.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information contained in the application and other information before the Commission, the NRC staff has determined that Penn Power and FENOC are qualified to hold the licenses as proposed in the application, and that the transfer of the licenses, to the extent proposed in the application, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated September 30, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. §§ 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the license transfers referenced above are approved, subject to the following conditions:

(1) All decommissioning funding arrangements pertaining to the transfer of DLC's ownership interests to Penn Power, as set forth in the application and the safety evaluation supporting this Order, shall be implemented and fulfilled.

(2) Penn Power and FENOC shall, prior to completion of the subject transfers, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary

[1] Duquesne Light Company, et al. (Beaver Valley Power Station, Units 1 and 2), CLI–99–23, 59 NRC ___ slip. op. (July 23, 1999).

[2] Duquesne Light Company, et al. (Beaver Valley Power Station, Units 1 and 2), CLI–99–25, 59 NRC ___ slip. op. (September 24, 1999).

evidence that Penn Power and FENOC have obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(3) After the receipt of all required regulatory approvals of the transfer of DLC's interest in BVPS–1 and BVPS–2 to Penn Power, and operating authority to FENOC, FENOC shall inform the Director, Office of Nuclear Reactor Regulation, in writing, of such receipt within five business days, and of the date of the closing of the transfer no later than seven business days prior to the date of closing. Should the transfer not be completed by September 30, 2000, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in the attachment to this Order, to conform the licenses to reflect the subject license transfers are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated May 5, 1999, as supplemented June 22, and July 30, 1999, and the safety evaluation dated September 30, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 30th day of September 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26144 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

I

Entergy Operations, Inc. (Arkansas Nuclear One, Unit 2); Exemption

[Docket No. 50–368]

Entergy Operations, Inc. (the licensee), is the holder of Facility Operating License No. NPF–6, which authorizes operation of Arkansas Nuclear One, Unit 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility is one of two pressurized-water reactors at the licensee's site located in Pope County, Arkansas.

II

In its letter dated October 8, 1997, as supplemented by letter dated February 25, 1999, the licensee requested an exemption from the Commission's regulations. Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, Section III.G.2, is designed to ensure that adequate fire protection features are provided for redundant cables or equipment located in the same fire area outside of primary containment such that at least one of the redundant trains of safe shutdown equipment will remain available during and after any postulated fire in the plant to achieve and maintain safe shutdown conditions. Section III.G.2.c requires the following means of assurance:

> Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour fire rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area[.]

The licensee has requested an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2.c, for cables and equipment located below the 354-foot elevation of the ANO–2 intake structure. The licensee is requesting an exemption from the specific requirement to provide fire detectors and an automatic fire suppression system to protect redundant trains of safe shutdown equipment that are located in the same fire zone. The licensee has demonstrated that one redundant train of cable and equipment, required to achieve and maintain safe shutdown conditions, is protected with a fire barrier having an equivalent 1-hour fire rating.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 (1) when the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *''

The underlying purpose of 10 CFR Part 50, Appendix R, Section III.G.2, is to provide reasonable assurance that at least one of the redundant trains of safe shutdown equipment will remain available during and after any postulated fire in the plant to achieve and maintain safe shutdown conditions.

The ANO–2 intake structure is about 32 feet by 26 feet on three levels. There are no rated fire barriers between the three levels. Below the 354-foot elevation there are three intake bays, which contain service water (SW) piping and conduits. The bays are approximately 7 feet by 32 feet and are separated from one another by 2-foot thick, non-rated concrete walls. The bays are separated from the ground level by an 18-inch thick, non-rated concrete slab on metal decking. The floor of the bays is typically covered with water 16 feet deep. The ceiling height is approximately 14 feet above the normal pool level. Of the three bays, only the ''A'' SW intake bay contains redundant cables. The licensee stated that the total in-situ combustible loading is 3,469,060 BTUs, which is equivalent to a fire severity to a standard fire duration of less than 4 minutes. Each bay is administratively controlled as a ''confined space,'' thus limiting access by personnel during routine operations and precluding the accumulation of combustibles. In addition, the licensee's administrative procedures limit the transient combustibles to 5 pounds unless personnel are continuously present in the area. In such cases, the personnel could be either the craft personnel responsible for using the combustible materials or a continuous fire watch. Water to the bay is normally provided through a sluice gate for the bays where the circulating pumps take suction.

SW is required to be available to supply cooling water for various safe shutdown components including the diesel generators and the shutdown cooling heat exchangers. Additionally, SW can be aligned to the emergency feedwater system in the event that the desired condensate source is depleted. The time critical function is to supply cooling for the diesel generators. The licensee stated that, on the basis of its calculations, the diesel generators (and therefore the SW system components) are not required to be operated during the first 30 minutes of a postulated fire event. The licensee allows the operators to manually align the SW system because the diesel generators are not required during the first 30 minutes of a fire event and sufficient time is available to complete the alignment.

The SW system consists of two independent seismic category 1 flow paths, which furnish cooling water to two independent trains of 100 percent capacity engineered safety feature equipment, and two nonseismic category 1 flow paths. The SW system has three 100 percent capacity pumps. One pump is dedicated to each of the two SW trains while the third pump is designated as a swing pump and can be aligned to either train. The two loops of the SW system are also electrically independent with two separate divisions of electrical power designated as the red and green train. The red train power for SW is aligned to either SW pump 2P4A or SW pump 2P4B, while the green train power is aligned to either SW pump 2P4C or SW pump 2P4B.

The four power cables associated with the 2P4A, 2P4B, and 2P4C SW pumps interface with the ''A'' SW intake bay. During plant operations (Modes 1 through 5), the ANO–2 technical specification requires that two SW trains be operable. The possible SW pump alignments are SW pumps 2P4A and 2P4B, SW pumps 2P4A and 2P4C, or SW pumps 2P4C and 2P4B. The power cable arrangements are as follows: conduit EA 1007 contains the red train power supply cable to SW pump 2P4A; conduit EA2036 contains the green train power supply cable to swing SW pump 2P4B; and conduit EA2007 contains the green train power supply cable for SW pump 2P4C. Conduits EA1007 and EA2036 are protected by separate 1-hour fire-rated Hemyc fire barriers. Below the 354-foot elevation, these conduits are also encapsulated in a common galvanized sheet metal moisture barrier. Conduit EA2007, which is located about 6 feet from the moisture barrier containing conduits EA1007 and EA2036, is covered by a Thermo-Lag barrier. The licensee stated that it does not take credit for the Thermo-Lag barrier to meet the requirements of Appendix R. Conduit EA1008, which contains the red train power supply to swing SW pump 2P4B, is embedded in the concrete slab at the elevation of 354 feet and does not enter the bay. Therefore, based on the preceding discussion, this area would require the addition of fire detectors and an automatic fire suppression system to comply with the requirements of 10 CFR Part 50, Appendix R, Section III.G.2.c.

The ''A'' SW intake bay contains redundant cables required to support post-fire safe shutdown. The licensee stated that the 2P4C/2P4B SW pump combination with SW pump 2P4B aligned to the red train power is the only pump alignment that would be utilized during normal operations in Modes 1 through 5 with the ''A'' SW intake bay isolated and drained. During the recovery from a fire, the time critical function is to supply cooling water to the diesel generators. The licensee stated that, on the basis of its calculations, the diesel generators (and therefore the SW system components) are not required to be operated during the first 30 minutes of a fire event. The licensee allows the operators to manually align the SW system because sufficient time is available to complete the alignment.

Power and control cables for the sluice gates are also located in the SW intake bays. Sluice gate valves 2CV1470–1, 2CV1472–5, and 2CV1474–2 are normally open, which corresponds to the safe shutdown position. The redundant control cables are separated horizontally by approximately 8 feet. As stated previously, the time critical function of the SW system is to provide cooling to the diesel generators. The licensee stated that if a fire were to cause the sluice gates to spuriously close, adequate time would be available before the SW was required to manually realign any affected component.

The in-situ combustibles in ''A'' SW intake bay and the administratively allowed quantity of transient combustibles (5 pounds) do not pose a credible fire threat to the SW pump cables. In the staff's view, a fire involving transient combustibles in excess of the administratively allowed quantity is the only type of fire that could damage redundant SW pump power cables. The licensee has addressed this threat by protecting both the red train power supply cable for SW pump 2P4A and the green train power supply cable for swing SW pump 2P4B with 1-hour fire-rated barriers, by embedding the red train power supply cable for SW swing pump 2P4B in concrete, and by administratively requiring the presence of craft personnel or a fire watch, if the administrative transient combustible limit is exceeded.

A fire involving transient combustibles could be extinguished by the craft personnel or the fire watch during its incipient stage. In the event the fire grows beyond the incipient stage before it is extinguished, the craft personnel or the fire watch could summon the plant fire brigade. In addition, the smoke and hot gases would be directed upwards into the higher elevations of the intake structure, which are equipped with an automatic fire detection system. Therefore, in the event that a fire in the intake bay is not discovered by the craft personnel or the fire watch, it would be detected by the automatic fire detection system and the plant fire brigade would be dispatched. If the fire exposes the redundant conduits, the 1-hour fire-rated barriers and the concrete embedding, with an equivalent 1-hour fire rating, would provide fire resistive protection, with margin, for the expected fire hazards and, therefore, provide reasonable assurance that the power cables would not be damaged before the fire either burns itself out or is extinguished by the craft personnel, the fire watch, or the fire brigade. On this basis, the staff concludes that the existing fire protection design features, coupled with the administrative controls, provide reasonable assurance that a fire in the ''A'' SW intake bay would not damage the redundant SW pump power cables and, therefore, would not adversely affect the ability to achieve and maintain post-fire safe shutdown. The staff also concludes that the installation of fire detectors and an automatic fire suppression system in the area below the 354-foot elevation of the ANO–2 intake structure would not result in a significant increase in the level of fire safety for the redundant SW pumps. Additional details concerning the exemption are provided in the staff's Safety Evaluation dated October 1, 1999.

For the forgoing reasons, the NRC staff has determined that there is a low probability of occurrence for a fire event in the ANO–2 intake structure below the 354-foot elevation. This low probability of occurrence combined with the lack of combustible material, administrative controls, and the fire protection features provided, as stated in the licensee's submittals, is sufficient to reasonably ensure adequate protection for redundant equipment in the SW system, such that there is reasonable assurance that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire. Therefore, the addition of fire detectors and an automatic fire suppression system is not necessary to achieve the underlying purpose of Appendix R, Section III.G.2.c.

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and presents no undue risk to public health and safety. In addition, the Commission has determined that the special circumstances under 10 CFR 50.12(a)(2)(ii) are present. Therefore, the Commission hereby grants Entergy Operations, Inc., an exemption from the requirements of 10 CFR Part 50, Appendix R, Section III.G.2.c, for the

area below the 354-foot elevation of the ANO–2 intake structure, such that fire detectors and an automatic fire suppression system need not be installed in the fire area.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (64 FR 52804).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of October 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26143 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Yankee Atomic Electric Company; Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Possession Only License No. DPR–3 issued to the Yankee Atomic Electric Company (YAEC or licensee) for the Yankee Nuclear Power Station (YNPS or plant), located in Rowe Township, Franklin County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) Section 6.0, Administrative Controls, by deleting TS Section 6.2.2.f, which contains limits on the working hours of plant staff. The proposed action would also authorize the incorporation of appropriate working hour restrictions into licensee-controlled documents or programs.

The proposed action is in accordance with the licensee's application for amendment dated March 17, 1999.

The Need for the Proposed Action

The licensee indicated in its March 17, 1999, letter that YAEC sees no benefit in and has no intention of imposing excessive overtime on its personnel. However, YAEC believes that it is much more efficient and effective to address this issue in its Administrative Procedures than to continue to be held to the potentially confusing restrictions in the present TSs. There are no accidents or other events in the Final Safety Analysis Report that would result in an immediate threat to the public or the plant staff, or result in offsite doses in excess of the Environmental Protection Agency Protective Action Guides.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not have any impact on the environment as the proposed changes are administrative in nature. The licensee does not propose any disposal or relocation of fuel by this action nor any other activities that have not already been approved by the NRC.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in environmental reviews for the YNPS.

Agencies and Persons Consulted

In accordance with its stated policy, on August 12, 1999, the staff consulted with the Commonwealth of Massachusetts State official, Jim Muckerheide of the Massachusetts Civil Defense Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 17, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located in the library of the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 1st day of October 1999.

For the Nuclear Regulatory Commission.

Louis L. Wheeler,

Acting Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26145 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70–754 and 70–1220]

G.E. Vallecitos; Notice of Public Meeting

The NRC will conduct a public meeting at the Shrine Event Center, 170 Lindbergh Avenue, Livermore, California 94550, on October 20, 1999, from 7:00 to 9:00 p.m. The meeting will discuss licensed activities related to post-irradiation examination of reactor fuel at the General Electric (G.E.) Vallecitos site. The G.E. Vallecitos site has been engaged in research and development since the 1950's. The G.E. Vallecitos site includes a Radioactive Materials Laboratory where the post-irradiation examinations are done. GE also holds other NRC licenses at Vallecitos. The G.E. Vallecitos site also fabricates radioactive sources used in medicine and industry under a license issued by the State of California.

The public meeting was initiated at the request of several area public officials who expressed interest in the safety of the periodic shipments of irradiated nuclear fuel for post irradiation examination at the G.E. Vallecitos site. The meeting will include

a short presentation by representatives of G.E. Vallecitos on site history and current operations. This will be followed by presentations by NRC representatives on the licensing and inspection programs covering the various activities authorized by the NRC licenses issued to G.E. Vallecitos. This will include a discussion on the safety aspects of the periodic shipments of irradiated nuclear fuel to the G.E. Vallecitos facility. After the presentations, members of the public will have an opportunity to ask questions.

For more information contact Breck Henderson, Office of Public Affairs, Region IV, Nuclear Regulatory Commission, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011; telephone 817–860–8128.

Dated at Rockville, Maryland, this 1st day of October 1999.

For the Nuclear Regulatory Commission.

Marvin M. Mendonca,

Senior Project Manager, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26141 Filed 10–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of October 4, 11, 18, and 25, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 4

There are no meetings scheduled for the Week of October 4.

Week of October 11—Tentative

Thursday, October 14

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of October 18—Tentative

Wednesday, October 20

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPO) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)

Thursday, October 21

9:30 a.m. Briefing on Part 35—Rule on Medical Use of Byproduct Material (Public Meeting) (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material,* is available in the NRC Public Document Room or on NRC web site at: ''www.nrc.gov/NRC/COMMISSION/SECYS/index.html'' Download the *zipped version* to obtain all attachments.)

Week of October 25—Tentative

There are no meetings scheduled for the Week of October 25.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 4–0 on September 24, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of FirstEnergy Nuclear Operating Co., et al. (Beaver Valley Power Station, Units 1 and 2), Docket Nos. 50–334–LT And 50–412–LT Local 29's Petition to Waive Time Limits in 10 CFR 2.1305 and Supplemental Comments'' (PUBLIC MEETING) be held on September 24, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: October 1, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–26286 Filed 10–5–99; 11:41 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Revision of Management Directive for Review of 10 CFR 2.206 Petitions; Request for Comments

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Request for comments.

SUMMARY: NRC Management Directive (MD) 8.11 describes the NRC review process for 10 CFR 2.206 petitions. The most recent phase of a continuing effort to improve the review process has resulted in a revision to MD 8.11, issued on July 1, 1999.

The process improvements were identified and developed on the basis of feedback from a limited stakeholder survey that was conducted in January 1999, as well as from NRC staff experience with the existing process. Many stakeholder comments and suggestions were addressed in the MD 8.11 revision. Other issues, such as the need for an appeal process, are under consideration by the staff.

The significant changes included in the revised MD 8.11 are as follows:

1. The informal public hearing process has been replaced with a simpler and more interactive staff-petitioner-licensee meeting, similar in format to staff-license meetings.

2. Petitioners are offered an opportunity to make a presentation to the petition review board (PRB) for the purposes of explaining the requested actions and their bases and answering staff questions.

3. Periodic PRB meetings will be held, in addition to the initial meeting, to provide additional management oversight, if appropriate.

4. The revised process requires significantly improved communications between the petition manager and the petitioner early on and throughout the process. For example, in the initial contact, the petition manager explains the process and identifies the cognizant staff groups that will be involved in considering the petition. During the periodic contacts, the petition manager is prepared to discuss the status and schedule of the review and to respond to the petitioner's questions. Prior to issuance of the acknowledgment letter and director's decision, the petition manager informs the petitioner of the imminent issuance and the substance of these documents.

5. Petitioners are added to the service lists on affected dockets.

6. Acknowledgment letters and director's decisions transmittal letters stress the actions the NRC staff has taken to address the petitioner's concerns, even when the petition is denied.

7. Up-to-date staff timeliness performance metrics are included in the 2.206 petition monthly staff reports prepared for the Executive Director for Operations.

Since the revised MD 8.11 was issued on July 1, 1999, the NRC staff has made changes in the implementation of items 1 and 2 above. As described in Part I of MD 8.11, instead of limiting the presentation to one representative for about a half-hour, the staff will allow one or more petitioner representatives a reasonable amount of time for the presentation. further, as described in Part III of the MD, instead of limiting the petitioner and licensee to one representative and about a half-hour each to address the petition's issues during staff-petitioner-licensee meetings, one or more petitioner and licensee representatives will be allowed a reasonable amount of time to address the issues. In practice, in previous staff-petitioner-licensee meetings, licensees and petitioners have not been limited with respect to the number of representatives or amount of time to address the issues. These clarifications will be reflected in the next revision to MD 8.11

The NRC staff is requesting comments and suggestions on MD 8.11, directed at further improving the review process. Management Directives are internal NRC procedures which are not ordinarily published for public comment. However, MD 8.11 deals with a process directly involving the public, and the NRC has determined that improvements to the process will benefit from public participation. All comments received will be considered. A public meeting will be scheduled at an appropriate time during the comment period to discuss the comments received. The result of this effort will be reflected in future revisions of the 2.206 review process.

DATES: The comment period ends January 31, 2000. Comments received after this date will be considered if it is practical to do so, but the staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be sent by completing the online comment form for MD 8.11 at http://www.nrc.gov/NRC/ND/index.html.

Deliver comments to Room 6D59, Two White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of MD 8.11, the complete text of which follows this notice, are available for a fee at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. This notice and MD 8.11 are electronically available on the Internet at http://www.nrc.gov/NRC/MD/index.html.

FOR FURTHER INFORMATION CONTACT: Herbert N. Berkow, Mail Stop O–8H12, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone (301) 415–1485 and e-mail at HNB@NRC.GOV.

Dated at Rockville, Maryland, this 30th day of September 1999.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

BILLING CODE 7590–01–M

Attachment to Notice

Review Process for 10 CFR 2.206 Petitions

Directive 8.11

Volume 8, Licensee Oversight Programs
Review Process for 10 CFR 2.206 Petitions
Directive 8.11

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U. S. Nuclear Regulatory Commission

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Review Process for 10 CFR 2.206 Petitions Directive 8.11

Policy
(8.11–01)

It is the policy of the U.S. Nuclear Regulatory Commission under Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206) to provide members of the public with the means to request action to enforce NRC requirements. The Commission may deny or grant a request for enforcement action, in whole or in part, and may take action that satisfies the safety concerns raised by the requester, even though it is not necessarily an enforcement action. Requests that raise health and safety and other issues without requesting enforcement action will be reviewed by means other than the 10 CFR 2.206 process.

Objectives
(8.11–02)

- To provide the public with a means to bring to the NRC's attention potential health and safety issues requiring NRC enforcement action. (021)
- To ensure the public health and safety through the prompt and thorough evaluation of any potential safety problem addressed by a petition filed under 10 CFR 2.206. (022)
- To provide for appropriate participation by the petitioners and the public in NRC's decision-making activities related to the 10 CFR 2.206 petition process. (023)
- To ensure effective communication with the petitioner on the status of the petition, including providing relevant documents and notification of NRC and licensee interactions on the petition. (024)

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Organizational Responsibilities and Delegations of Authority
(8.11–03)

Executive Director for Operations (EDO)
(031)

Receives and assigns action for all petitions filed under 10 CFR 2.206.

Director, Office of the Chief Information Officer (OCIO)
(032)

Provides hardware, software, and communication services support of the NRC Home Page for making information publicly available on the status of the petitions.

Office of the General Counsel (OGC)
(033)

- Provides legal review and advice on 10 CFR 2.206 petitions and director's decisions upon specific request from the staff in special cases or where the petition raises legal issues. (a)
- Gives legal advice to the EDO, office directors, and staff on relevant 2.206 matters. (b)

Office Directors (or Designees)
(034)

- Have overall responsibility for assigned petitions. (a)
- Approve or deny a petitioner's request for immediate action. (b)
- Sign all acknowledgment letters and director's decisions. (c)
- Determine whether criteria for a meeting with the petitioner and licensee are met, and notify the Commission, through the EDO, once a determination is made that a 2.206 petition meets the criteria for a meeting. (d)

Office Directors (or Designees)
(034) (continued)

- Provide up-to-date information for the monthly status report on all assigned petitions, including the total number of staff hours expended on each open petition; provide this information to the agency coordinator who, in turn, ensures that the information is made publicly available in the Public Document Room and on the NRC Home Page. (e)
- Appoint a petition review board chairperson. (f)
- Designate a petition manager for each petition. (g)
- Concur, as appropriate, in each extension request from the petition manager and forward the extension request to the Office of the EDO (OEDO) for approval. (h)
- Promptly notify the Office of Investigations (OI) of any allegations of suspected wrongdoing by a licensee, or the Office of the Inspector General (OIG) of suspected wrongdoing by an NRC staff person or NRC contractor, that are contained in the petitions they may receive. (i)
- Obtain review and concurrence from the Office of Enforcement for proposed director's decisions that involve potential enforcement implications. (j)
- Ensure that the director's decision and the supporting evaluation of the petition adequately reflects information presented at any meetings with the petitioner, to the extent that such information was useful. (k)

Regional Administrators
(035)

- Refer any 2.206 petitions they may receive to the EDO. (a)
- Promptly notify OI of any allegations of suspected wrongdoing by a licensee, or OIG of suspected wrongdoing by an NRC staff person or NRC contractor, that are contained in the petitions they may receive. (b)
- As needed, provide support and information for the preparation of an acknowledgment letter and/or a director's decision on a 2.206 petition. (c)
- Make the petition manager aware of information that is received or that is the subject of any correspondence relating to a pending petition. (d)

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2.206 Petition Review Board Chairperson
(Each program office has a board chairperson, generally an SES manager.)
(036)

- Chairs petition review board meetings. (a)
- Ensures appropriate review of all new petitions in a timely manner. (b)
- Ensures appropriate documentation of petition review board meetings. (c)
- Chairs periodic meetings with the petition managers to discuss the status of open petitions and to provide guidance for timely issue resolution. (d)

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation (NRR)
(037)

Appoints the Agency 2.206 Coordinator, NRR, who prepares monthly reports to the EDO on petition status, age, and resource expenditures for the signature of the Associate Director for Project Licensing and Technical Analysis.

Applicability
(8.11–04)

The policy and guidance in this directive and handbook apply to all NRC employees.

Handbook
(8.11–05)

Handbook 8.11 details the procedures for staff review and disposition of petitions submitted under Section 2.206.

Definitions
(8.11–06)

A 10 CFR 2.206 Petition. A written request filed by any person to institute a proceeding to modify, suspend, or revoke a license, or for any other enforcement action that may be proper and that meets the criteria for review under 10 CFR 2.206 (see Part II of Handbook 8.11).

Definitions
(8.11–06) (continued)

A 10 CFR 2.206 Petition Meeting. A meeting open to the public and held by NRC staff to provide an opportunity to the petitioner and licensee to supply information to assist NRC staff in the evaluation of petitions that raise new, significant safety issues, as defined in Part II(D)(3)(a) of Handbook 8.11, or that provide new information or approaches for the evaluation of significant safety issues previously evaluated.

References
(8.11–07)

Code of Federal Regulations—

10 CFR 2.206, "Requests for Action Under this Subpart."

10 CFR 2.790, "Public Inspections, Exemptions, Requests for Withholding."

Nuclear Regulatory Commission—

Enforcement Manual, "General Statement of Policy and Procedure for NRC Enforcement Actions," Office of Enforcement, NUREG-1600.

Investigative Procedures Manual, Office of Investigations, revised August 1996.

Management Directive (MD) 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."

— MD 8.8, "Management of Allegations."

— MD 12.6, "NRC Sensitive Unclassified Information Security Program."

Memorandum of Understanding Between the NRC and the Department of Justice, December 12, 1988.

"Nuclear Regulatory Commission Issuances," published quarterly as NUREG-0750.

Review Process for 10 CFR 2.206 Petitions

Handbook 8.11

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Volume 8, Licensee Oversight Programs
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Contents (continued)

Part I

Initial Staff Actions

Introduction (A)

Title 10 of the *Code of Federal Regulations*, Section 2.206 (1)

This section of the regulations has been a part of the Commission's regulatory framework since the Commission was established in 1975. Section 2.206 permits any person to file a petition to request that the Commission institute a proceeding to take enforcement action. (a)

The petition must request that a license be modified, suspended, or revoked, or that other appropriate enforcement action be taken and must provide sufficient facts that constitute the bases for taking the particular action. (b)

Section 2.206 provides a procedure that allows any person to file a request to institute a proceeding for enforcement action and requires that the petition be submitted in writing and provide sufficient grounds for taking the proposed action. Do not treat general opposition to nuclear power or a general assertion of a safety problem, without supporting facts, as a formal petition under 10 CFR 2.206. Treat general requests as routine correspondence. (c)

NRC's Receipt of a Petition (2)

After NRC receives a petition, it is assigned to the director of the appropriate office for evaluation and response. The official response is a written decision of the office director that addresses the issues raised in the petition. The director's decision can grant, partially grant, or deny the petition. The Commission may, on its own initiative, review the director's decision (to determine if the director has abused his or her discretion), but no petition or other request for Commission review of the director's decision will be entertained by the Commission.

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Introduction (A) (continued)

NRC Home Page (3)

The NRC Home Page provides the up-to-date status of pending 2.206 petitions, director's decisions issued, and notices of meetings. The NRC external home page is accessible via the World Wide Web, and documents may be found at *http://www.nrc.gov/NRC/PUBLIC/2206/index.html*. Director's decisions are published in NRC Issuances (NUREG-0750).

Assignment of Staff Action and 2.206 Petition Review Board (B)

Office of the Executive Director for Operations (OEDO) (1)

The OEDO assigns the petition to the appropriate office for action. The original incoming is sent to the office and a copy of the petition is sent to the Office of the General Counsel (OGC).

Agency 2.206 Coordinator, Office of Nuclear Reactor Regulation (NRR) (2)

The Agency 2.206 Coordinator, NRR (appointed by the Director, Division of Licensing Project Management), receives copies of all 2.206 petitions from OEDO and prepares the 2.206 periodic status report.

Assigned Office (3)

The office director of the assigned office designates a petition manager and an office petition review board chairperson for each petition. The petition manager drafts the acknowledgment letter and *Federal Register* notice (see Exhibits 1 and 2 of this handbook). The petition manager ensures that the petition is placed in the public document room after it is determined that the petition does not contain allegations or sensitive information. A petition review board meets within 3 weeks of receipt of the petition. Each assigned office conducts at least one review board meeting for each petition. The petition review board consists of—(a)

- A petition review board chairperson (SES manager or above) (i)
- A petition manager (ii)
- Cognizant technical review branch chief(s), as necessary (iii)
- An Office of Enforcement (OE) or Office of Investigations (OI) representative, as needed (iv)

In addition, OGC normally will participate. (b)

Assignment of Staff Action and 2.206 Petition Review Board (B) (continued)

Assigned Office (3) (continued)

The purpose of the petition review board meeting is to—(c)

- Determine whether the petitioner's request meets the criteria defined in 10 CFR 2.206 (see Part II(A) of this handbook) (i)
- Determine whether the petition meets the criteria for a meeting with the petitioner and licensee (see Part II(C) of this handbook) (ii)
- Promptly address any request for immediate action (iii)
- Address the possibility of issuing a partial director's decision (iv)
- Draft a schedule for responding to the petitioner so that a commitment is made by management and the technical review staff to respond to the petition in a timely manner (see Part IV(A) of this handbook) (v)
- Determine whether the petition is sufficiently complex that additional review board meetings should be scheduled to ensure that suitable progress is being made (vi)

The appointed petition review board chairperson for each office—(d)

- Chairs and coordinates 2.206 petition review board meetings for the assigned office (i)
- Ensures the 2.206 petition review board meetings are documented (ii)

Assigned Office Action (C)

Office Director (1)

The assigned office director signs and issues the acknowledgment letter and the *Federal Register* notice. This action should be completed by the date specified by OEDO for the action. (a)

The office director, or designee, ensures that the appropriate licensee is sent a copy of the acknowledgment letter and a copy of the incoming request at the same time as the petitioner. If appropriate, the licensee will be requested to provide a response to the NRC on the issues specified in the petition, usually within 30 days. (b)

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Assigned Office Action (C) (continued)

Office Director (1) (continued)

When an unannounced technical inspection or an OI investigation is involved, the office director makes the decision to release information to the licensee in a manner to ensure that the staff does not release information that would indicate to the licensee or the public that an unannounced inspection or investigation will be undertaken or information that would undermine the inspection or investigation. (c)

The office director carefully considers any potential conflict or loss of objectivity that might result from assigning the same staff who were previously involved with the issue that gave rise to the petition. (d)

Petition Manager (2)

The petition manager—(a)

- Briefs the petition review board on the petitioner's request(s), any background information, the need for an independent technical review, and a proposed plan for resolution, including target completion dates (i)
- Promptly advises the licensee of the petition, sends the licensee a copy of the petition, and places the petition and all subsequent related correspondence in the Public Document Room. (ii)
- Drafts the acknowledgment letter and *Federal Register* notice, serves as the NRC point of contact with the petitioner, provides updates to the periodic 2.206 status report to the Executive Director for Operations (EDO), and monitors the progress of any OI investigation and related enforcement actions (iii)
- Prepares the director's decision on the petition for the office director's consideration, including coordination with the appropriate staff supporting the review (iv)
- Ensures appropriate documentation of all 10 CFR 2.206 petition determinations, including the determination on whether a meeting is offered (v)

The petition manager ensures that a copy of this management directive is included with the acknowledgment letter. The acknowledgment letter also should include the name and telephone number of the petition manager and identify the technical staff organizational units that will participate in the review. (b)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

The acknowledgment letter, as well as the transmittal letter for the director's decision or partial director's decision, should acknowledge the petitioner's efforts in bringing issues to the staff's attention. (c)

If appropriate, the decision transmittal letter should acknowledge that the petitioner identified valid issues and should specify the corrective actions that have been or will be taken to address these issues, notwithstanding that some or all of the petitioner's specific requests for action have not been granted. (d)

The petition manager places the petitioner on distribution for all relevant NRC correspondence to the licensee to ensure that the petitioner receives copies of all NRC correspondence with the licensee pertaining to the petition. If there is a service list(s) add the petitioner to the list(s) for all headquarters and regional documents on the affected dockets. Remove the petitioner's name from distribution and/or the service list(s) 90 days after issuance of the director's decision. The petition manager sends licensee-prepared documents submitted to the NRC that are relevant to the petition to the petitioner for the same duration as staff-generated documents. If the licensee is asked to respond, the petition manager advises the licensee that the NRC intends to place the licensee's response in the Public Document Room and provide the response to the petitioner. (e)

Unless necessary for NRC's proper evaluation of the petition, the licensee should avoid using proprietary or personal privacy information that requires protection from public disclosure. If such information is necessary to properly respond to the petition, the petition manager ensures the information is protected in accordance with 10 CFR 2.790. (f)

The petition manager also ensures that the petitioner is placed on distribution for other NRC correspondence relating to the issues raised in the petition, including relevant generic letters or bulletins that are issued during the pendency of the NRC's consideration of the petition. This does not include NRC correspondence or documentation related to an OI investigation, which will not be released outside NRC without the approval of the Director, OI. (g)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

Before the petition review board meeting, the petition manager informs the petitioner that the 2.206 petition process is a public process in which the petition and all the information in it will be made public. If the petitioner requests anonymity and that the petition not be made public, advise the petitioner that, because of its public nature, the 2.206 process cannot provide protection of the petitioner's identity. In such cases, advise the petitioner that the matter will be handled as an allegation and that the petitioner should withdraw the petition in writing. During this telephone contact, offer the petitioner an opportunity to have one representative give a presentation to the petition review board. The petitioner (or representative) may participate in person or by teleconference on a recorded line and only for the purpose of explaining the requested actions, their bases, and answering staff questions. The presentation will be limited to about a half hour and will be transcribed. Treat the transcription as a supplement to the petition and send a copy of the transcription to the petitioner and to the same distribution as the original petition. (h)

If the petition contains a request for immediate enforcement action by the NRC, such as a request for immediate suspension of facility operation until final action is taken on the request, the acknowledgment letter must respond to the immediate action requested. If the immediate action is denied, the staff must explain the basis for the denial in the acknowledgment letter. If the staff plans to take an action that is contrary to an immediate action requested in the petition before issuing the acknowledgment letter (such as permitting restart of a facility when the petitioner has requested that restart not be permitted), the petition manager must promptly notify the petitioner by telephone of the pending staff action. The petitioner will not be advised of any wrongdoing investigation being conducted by OI. (i)

In cases where the staff identifies certain issues in a petition that it believes are more appropriately addressed using the allegation process, the petition manager advises the petitioner of this staff view during the initial telephone contact and suggests to the petitioner that he or she withdraw those issues from the petition with the understanding that they will be addressed through the allegation process. (j)

Assigned Office Action (C) (continued)

Petition Manager (2) (continued)

All telephone contacts with the petitioner will be documented by a memorandum to file, which becomes part of the petition file. (k)

OGC Staff Attorney (3)

OGC normally participates in the petition review board meetings for the 2.206 petition and provides legal review and advice on 10 CFR 2.206 petitions and director's decisions upon specific request from the staff in special cases or where the petition raises legal issues. OGC may be assigned as the responsible office for the review, if appropriate.

Reporting Requirements and Updating the Status of Petitions on the NRC Home Page (D)

On a monthly basis, the Agency 2.206 Coordinator, NRR, will contact all petition managers reminding them to prepare a status report on 2.206 petitions in their office. This report will be made available in the PDR and placed on the NRC Home Page. The petition managers should electronically mail the status report for each open petition, with the exception of sensitive information as described below, to PETITION. The Agency 2.206 Coordinator combines all the status reports, including staff performance metrics for petitions processed under 10 CFR 2.206 for the current year, in a monthly report to the EDO from the Associate Director, Project Licensing and Technical Analysis, and provides a copy of the report to the Web operator for placement on the NRC Home Page. (1)

If the information on the status of the petition is sensitive information that may need to be protected from disclosure (e.g., safeguards or facility security information, proprietary or confidential commercial information, information relating to an ongoing investigation of wrongdoing or enforcement actions under development, or information about referral of matters to the Department of Justice), the petition manager and Agency 2.206 Coordinator should ensure that this information is protected from disclosure. Sensitive information should be handled in accordance with Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." (2)

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Part II

Criteria for Petition Evaluation

Use the criteria discussed in this part for determining whether a petition should be considered under 10 CFR 2.206, if similar petitions should be consolidated, and if a public meeting should be offered.

Criteria for Reviewing Petitions Under 10 CFR 2.206 (A)

Review a petition under the requirements of 10 CFR 2.206 if the request meets all of the following criteria: (1)

- The petition contains a request for enforcement action: either requesting that NRC impose requirements by order; or issue an order modifying, suspending, or revoking a license; or issue a notice of violation, with or without a proposed civil penalty. (a)

- The enforcement action requested and the facts that constitute the bases for taking the particular action are specified. The petitioner must provide some element of support beyond the bare allegation. The supporting facts must be credible and sufficient to warrant further inquiry. (b)

- Acceptance for review under 10 CFR 2.206 will not result in circumventing an available proceeding in which the petitioner is or could be a party. (c)

If a petition meets the criteria but does not specifically cite 10 CFR 2.206, the petition manager will attempt to contact the petitioner by telephone to determine if the individual wants the request processed pursuant to 10 CFR 2.206. If the petition is unclear or appears to be marginal in meeting the criteria for review, the petition manager will encourage and facilitate a presentation to the petition review board by the petitioner so that the concerns can be clarified. (2)

Criteria for Rejecting Petitions Under 10 CFR 2.206 (B)

Do not review a petition under 10 CFR 2.206, whether specifically cited or not, under the following circumstances: (1)

- The incoming correspondence does not ask for an enforcement action or fails to provide sufficient facts to support the petition but simply alleges wrongdoing, violations of NRC regulations, or existence of safety concerns. The request cannot be simply a general statement of opposition to nuclear power or a general assertion without supporting facts (e.g., the quality assurance at the facility is inadequate). These assertions will be treated as allegations and referred for appropriate action in accordance with Management Directive (MD) 8.8, "Management of Allegations." (a)
- The petitioner raises issues that already have been the subject of NRC staff review and evaluation either on the cited facility, other plant facilities, or on a generic basis, for which a resolution has been achieved, the issues have been dispositioned, and the resolution is applicable to the facility in question. (b)
- The request is to reconsider or reopen a previous enforcement action (including a decision not to initiate an enforcement action) or a director's decision and will not be treated as a 2.206 petition unless it presents significant new information. (c)
- The request is to deny a license application or amendment. This type of request should initially be addressed in the context of the relevant licensing action, not under 10 CFR 2.206. (d)

If a petitioner's request does not meet the criteria for consideration under 10 CFR 2.206, a letter will be sent to the petitioner explaining why the request is not being reviewed under 10 CFR 2.206 (see Exhibit 3). (2)

Criteria for Consolidating Petitions (C)

All requests submitted by different individuals will, as a general practice, be treated and evaluated separately. When two or more petitions request the same action, specify the same bases, provide adequate supporting information, and are submitted at about the same time, the petition review board considers the benefits of consolidating the petitions against the potential of diluting the importance of any petition and recommends whether or not consolidation is appropriate. The assigned office director determines whether or not to consolidate the petitions.

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Criteria for Meetings (D)

For petitions meeting the criteria specified in this section, the staff offers the petitioner an opportunity for a meeting. A meeting, which is a resource for the staff in evaluating the petition, also affords the petitioner and the licensee an opportunity for enhanced involvement in the Commission's decision-making process. (1)

A meeting is not automatically granted and will not be offered simply at the petitioner's request. If the staff offers the petitioner the opportunity for a meeting, the petitioner then has the option to accept or reject the offer. If the petitioner rejects the offer, a meeting will not be conducted and the petition review will continue. If the petitioner accepts the offer of a meeting, the licensee will be invited to participate in the meeting. (2)

The staff uses the following criteria to determine if an opportunity for a meeting is to be offered to the petitioner. Either one of the two elements listed below must be met. (3)

- The petition raises the potential for a significant safety issue. For nuclear reactors and nuclear material licensees, a significant safety issue is an issue that could lead to a significant exposure, could cause significant core damage, or could otherwise result in a significant reduction of protection of public health and safety. The information is considered "new" if one the following applies: (a)
  - The petition presents a significant safety issue not previously evaluated by the staff. (i)
  - The petition presents significant new information on a significant safety issue previously evaluated. (ii)
  - The petition presents a new approach for evaluating a significant safety issue previously evaluated and, on preliminary assessment, the new approach appears to have merit and to warrant reevaluation of the issue. (iii)
- The petition alleges violations of NRC requirements involving a significant safety issue for which new information or a new approach has been provided, and it presents reasonable supporting facts that tend to establish that the violation occurred. (b)

Criteria for Meetings (D) (continued)

A meeting will not be held if to do so will compromise "sensitive" information that may need to be protected from disclosure, such as safeguards or facility security information, proprietary or confidential commercial information, or information relating to an ongoing investigation of wrongdoing. The petition manager ensures that a meeting will not compromise the protection of this information before offering the petitioner the opportunity for a meeting. A meeting also will not be held simply because the petitioner claims to have additional information and will not present it in any other forum. (4)

Part III

Procedures for Conducting a 10 CFR 2.206 Petition Meeting

After the staff determines that a petition meets the criteria for a meeting, set forth in Part II (D) of this handbook, and the petitioner accepts the offer of a meeting, the petition manager contacts the petitioner to schedule a mutually agreeable date for the meeting. The petition manager also requests the licensee to participate in the meeting to present its position and coordinates the schedules and dates with the licensee. The meeting must be scheduled so as not to adversely impact the established petition review schedule.

Meeting Location (A)

Meetings normally will be held at NRC headquarters in Rockville, Maryland, with provisions for participation by telephone or video link. If justified by special circumstances, the staff may hold the meeting at some location other than NRC headquarters.

Notice of Meeting (B)

Provisions for a meeting notice will be made in accordance with agency policy. The NRC petition manager will ensure that a copy of the meeting notice is placed on the NRC Home Page, that the scheduled meeting is included in the Public Meeting Notice System, that the Office of Public Affairs is notified of the meeting, and that the meeting notice is communicated to the petitioner. (1)

All meetings are transcribed, and the transcripts are publicly available. (2)

Meeting Chairperson (C)

The meeting is chaired by the NRC office director responsible for addressing the petition, or by his or her designee. (1)

The purpose of the meeting is to obtain additional information from the petitioner and the licensee for NRC staff use in evaluating the petition. It is not a forum for the staff to offer any preliminary decisions on the evaluation of the petition. The chairperson has final authority to determine the conduct of the meeting. Members of the public may attend as observers. (2)

Meeting Format (D)

The meeting chairperson provides a brief summary of the 2.206 process, the purpose of the meeting, and the petition. Following the opening statement—(1)

- The petitioner is allowed a reasonable amount of time (approximately 30 minutes) to articulate the basis for the petition. (a)
- NRC staff have an opportunity to ask the petitioner questions for purposes of clarification. (b)
- The licensee is then allowed a reasonable amount of time (approximately 30 minutes) to address the issues raised in the petition. (c)
- NRC staff have an opportunity to ask the licensee questions for purposes of clarification. (d)

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Part IV
Further Staff Actions

General (A)

Schedule (1)

The assigned office holds a petition review board meeting on the submitted 2.206 petition within 3 weeks of receipt of the petition. The review board helps determine the appropriate schedule as well as how best to respond to the petitioner's concerns. (a)

The goal is to issue the director's decision, or partial director's decision, within 120 days from the date of issuance of the acknowledgment letter. The Office of the Executive Director for Operations (OEDO) tracks the target date, and any change of the date requires approval by the OEDO. Enforcement actions that are prerequisites to a director's decision must be expedited and completed in time to meet the the 120-day goal. Investigations by the Office of Investigations (OI) should be expedited to the extent practicable. However, the goal of issuing a full, or partial, director's decision within 120 days after issuing the acknowledgment letter applies only to petitions whose review schedules are within the staff's control. If issues in a petition are the subject of an extended OI investigation, or a referral to the Department of Justice (DOJ), or if NRC decides to await a Department of Labor (DOL) decision, a partial director's decision is issued within 120 days, and the 120-day goal is not applied to the remainder of the petition. When more time is needed (e.g., when issues in a petition are the subject of an extended OI investigation, or a referral to DOJ, or if NRC decides to await a DOL decision), the assigned office director determines the need for an extension of the schedule and requests the extension from the OEDO. (b)

General (A) (continued)

Schedule (1) (continued)

If the director's decision cannot be issued in 120 days, the petition manager promptly contacts the petitioner explaining the reason(s) for the delay and maintains a record of such contact. If the delay results from an ongoing OI investigation, the petition manager contacts the Director, OI, to obtain approval for citing the OI investigation as the reason for the delay. (c)

If there is alleged wrongdoing on the part of licensees, their contractors, or their vendors, immediately notify OI. If there is alleged wrongdoing involving an NRC employee, NRC contractors, or NRC vendors, immediately notify the Office of the Inspector General (OIG). (d)

Petition Review Board Actions (2)

The petition review board ensures that an appropriate petition review process is followed. This includes recommending whether or not: (a)

- The submittal qualifies as a 2.206 petition. (i)
- The petitioner should be offered or informed of an alternative process (e.g., consideration of issues as allegations, consideration of issues in a pending license proceeding, or conduct of an inspection). (ii)
- The petition should be consolidated with another petition. (iii)
- A public meeting should be offered. (iv)
- Referral to OI or OIG is appropriate. (v)
- There is a need for additional review board meetings. (vi)
- There is a need for the Office of the General Counsel (OGC) to participate in the review. (vii)
- An adequate review schedule and technical review participation have been established. (viii)
- Any petitioner's request for immediate action should be granted or denied. (ix)
- The licensee should be requested to respond to the petition. (x)
- A partial director's decision should be issued. (xi)

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General (A) (continued)

Petition Manager Actions (3)

The petition manager drafts the acknowledgment letter and *Federal Register* notice and coordinates all information required from the professional staff within his or her organization and other organizations and from OI if a wrongdoing issue is under consideration. The petition manager also advises his or her management of the need for OGC review and advice regarding a petition in special cases. An Associate Director of the Office of Nuclear Regulation (NRR), a Division Director in the Office of Nuclear Material Safety and Safeguards (NMSS), or the Director of the Office of Enforcement(OE) makes a request for OGC involvement to the OGC special counsel assigned to 2.206 matters. (a)

The petition manager ensures that the petitioner is notified at least every 60 days of the status of the petition, or more frequently if significant actions occur. The petition manager makes the bimonthly status reports by telephone and should not leave a message on a voice mail message system unless repeated efforts to contact the petitioner are unsuccessful. The petition manager keeps up-to-date on the status of the petition so that reasonable detail can be provided with the status reports. However, the status report to the petitioner will not indicate—(b)

- An ongoing OI investigation, unless approved by the Director, OI (i)
- The referral of the matter to DOJ (ii)
- Enforcement action under consideration (iii)

The petition manager also will make the following telephone contacts with the petitioner: (c)

- Within 1 week after receipt of the petition and before the petition review board meeting, contact the petitioner to explain the public nature of the 2.206 petition process. During this contact, offer the petitioner an opportunity to have one representative give a presentation to the petition review board. The petitioner (or representative) may participate in person or by teleconference on a recorded line and only for the purpose of explaining the requested actions, their bases, and answering staff questions. The presentation will be limited to about a half hour and will be transcribed. Treat the transcription as a supplement to the petition and send a copy of the transcription to the petitioner and to the same distribution as the original petition. (i)

General (A) (continued)

Petition Manager Actions (3) (continued)

- After the petition review board meets, and before issuance of the acknowledgment letter, inform the petitioner as to whether or not the petition qualifies as a 2.206, disposition of any requests for immediate action, how the review will proceed, and that an acknowledgment letter is coming. (ii)

- Before dispatching the director's decision (or partial decision), inform the petitioner of the imminent issuance of the decision and the substance of the decision. (iii)

- When the director's decision has been signed, promptly send a copy electronically or by fax, if possible, to the petitioner. (iv)

Director's Decision (B)

The staff normally prepare a partial director's decision when some of the issues associated with the 2.206 petition are resolved in advance of other issues and if significant schedule delays are anticipated before resolution of the entire petition. If a wrongdoing investigation is being conducted in relation to the petition, the staff consider the results of the OI investigation, if available, in completing the action on the petition. (1)

Management Directive 8.8, "Management of Allegations," provides agency policy with regard to notifying OI of wrongdoing matters, as well as initiating, prioritizing, and terminating investigations. The petition manager should become familiar with the current version of this directive and follow the policy outlined therein when dealing with issues requiring OI investigations. (2)

All information related to an OI wrongdoing investigation, or even the fact that an investigation is being conducted, will receive limited distribution within NRC and will not be released outside NRC without the approval of the Director, OI. Within NRC, access to this information is limited to those having a need-to-know. Regarding a 2.206 petition, the assigned office director, or his designee, maintains copies of any documents required and ensures that no copies of documents related to an OI investigation are placed in the docket file, the agency's document management system, or the Public Document Room (PDR), without the approval of the Director, OI. (3)

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Director's Decision (B) (continued)

The petition manager submits the completed draft decision to his or her management for review. After management's review, the petition manager incorporates any proposed revisions in the decision. If the decision is based on or references a completed OI investigation, OI must concur in the accuracy and characterization of the OI findings and conclusions that are used in the decision. (4)

If appropriate, the petition manager obtains OE management's review of and concurrence in the draft director's decision for potential enforcement implications. (5)

Granting the Petition (C)

Upon granting the petition, in whole or in part, the petition manager prepares a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision explains the bases upon which the petition has been granted and identifies the actions that NRC staff have taken or will take to grant all or that portion of the petition. The Commission may grant a request for enforcement action, in whole or in part, and also may take action to satisfy the safety concerns raised by the petition, although such action is not necessarily an enforcement action. A petition is characterized as being granted in part when NRC did not grant the action as asked but took other action to address the underlying safety problem. If the petition is granted in full, the director's decision explains the bases for granting the petition and states that the Commission's action resulting from the director's decision is outlined in the Commission's order or other appropriate communication. (1)

If the petition is granted by issuing an order, the petition manager prepares a letter to transmit the order to the licensee. He or she prepares another letter to explain to the petitioner that the petition has been granted and encloses a copy of the order. Copies of the director's decision and *Federal Register* notice to be sent to the licensee and individuals on the service list(s) are dispatched simultaneously with the petitioner's copy. (2)

Denying the Petition (D)

Upon denial of the petition, in whole or in part, the petition manager prepares a "Director's Decision Under 10 CFR 2.206" for the office director's signature. The decision explains the bases for the denial and discusses all matters raised by the petitioner in support of the request. If appropriate, the decision transmittal letter acknowledges that

Denying the Petition (D) (continued)

the petitioner identified valid issues and specifies the corrective actions that have been or will be taken to address these issues, notwithstanding that some of all of the petitioner's specific requests for action have not been granted. The office director sends a letter to the petitioner transmitting the director's decision, along with a *Federal Register* notice explaining that the request has been denied. (1)

If an OI investigation is completed either before granting or denying the petition, the petition manager contacts OI and OE to coordinate NRC's actions when the wrongdoing matter has been referred to DOJ. It may be necessary to withhold action on the petition in keeping with the memorandum of understanding with DOJ. (2)

Issuance of Director's Decision (E)

A decision under 10 CFR 2.206 consists of a letter to the petitioner, the director's decision, and the *Federal Register* notice. The petition manager or administrative staff contacts the Office of the Secretary (SECY) to obtain a director's decision number (i.e., DD-YEAR-00). A director's decision number is assigned to each director's decision in numerical sequence. This number is typed on the letter to the petitioner, the director's decision, and the *Federal Register* notice. Note that the director's decision itself is not published in the *Federal Register*; only the notice of its availability, containing the substance of the decision, is published (see Exhibit 4). (1)

The assigned office director signs the *Federal Register* notice. After the notice is signed, it is forwarded to the Rules and Directives Branch, Office of Administration (ADM/DAS/RDB), for transmittal to the Office of the Federal Register for publication. (2)

Distribution (F)

The administrative staff of the assigned office reviews the 10 CFR 2.206 package before it is dispatched and determines appropriate distribution. The administrative staff also performs the following actions on the day the director's decision is issued: (1)

- Telephones the Rulemakings and Adjudications Staff, SECY, to advise the staff that the director's decision has been issued. (a)
- Immediately hand-carries the listed material to the following offices (in the case of the petitioner, promptly dispatch the copies.): (b)

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Distribution (F) (continued)

- Rulemakings and Adjudications Staff, SECY (i)
  - Five copies of the director's decision (*a*)
  - Two courtesy copies of the entire decision package including the distribution and service lists. Ensure that documents referenced in the decision are publicly available in the NRC Public Document Room (*b*)
  - Two copies of the incoming petition and any supplement(s) (*c*)
- Petitioner (ii)
  - Signed original letter (*a*)
  - Signed director's decision (*b*)
  - A copy of the *Federal Register* notice (*c*)
- Chief, Rules and Directives Branch (iii)
  - Original signed *Federal Register* notice (*a*)
  - Five paper copies of the notice (*b*)

Promptly fulfill these requirements because the Commission has 25 calendar days from the date of the decision to determine whether or not the director's decision should be reviewed. (2)

Although 2.206 actions are controlled as green tickets, use the following guidelines when distributing copies internally and externally: (3)

- Attach the original 2.206 petition and any enclosure(s) to the Docket or Central File copy of the first response (acknowledgment letter). Issue copies to the appropriate licensees and individuals on the docket service list(s). (a)
- When action on a 2.206 petition is completed, the petition manager should ensure that all publicly releasable documentation is placed in the PDR and the agency document control system. (b)
- The distribution list should include appropriate individuals and offices as determined by the assigned office. (c)

Followup Actions (G)

The administrative staff of the assigned office completes the following actions within 2 working days of issuance of the director's decision:

- Provide one paper copy of the director's decision to the OGC special counsel assigned to 2.206 matters. (1)
- Copy the final version of the director's decision onto a diskette in WordPerfect. Send this diskette and two paper copies of the signed director's decision to the NRC Issuances (NRCI) Project Officer, Electronic Publishing Section (EPS), Publishing Services Branch (PSB), Office of the Chief Information Officer (OCIO). (2)
- When writing opinions, footnotes, or partial information (such as errata) on the diskette, identify the opinion, the director's decision number, and the month of issuance at the beginning of the diskette. Clearly identified information on the diskettes will help to avoid administrative delays and improve the technical production schedule for proofreading, editing, and composing the documents. (3)
- Electronically mail a signed, dated, and numbered copy of the director's decision to NRCWEB for the NRC Home Page. (4)
- Electronically prepare a headnote, which is a summary of the petition consisting of no more than two paragraphs describing what the petition requested and how the director's decision resolved or closed out the petition. Electronically send the headnote to the PSB, OCIO, for monthly publication in the NRC Issuances, NUREG-0750. The headnotes should reach PSB before the 5th day of the month following the issuance of the director's decision. (5)

Commission Actions (H)

SECY informs the Commission of the availability of the director's decision. The Commission, at its discretion, may determine to review the director's decision within 25 days of the date of the decision and may direct the staff to take some other action than that in the director's decision. If the Commission does not act on the director's decision within 25 days, the director's decision becomes the final agency action and a SECY letter is sent to the petitioner informing the petitioner that the Commission has taken no further action on the petition.

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Exhibit 1

Sample Acknowledgment Letter

[Petitioner's Name]
[Petitioner's Address]

Dear Mr. :

Your petition dated **[insert date]** and addressed to the **[insert addressee]** has been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. You request **[state petitioner's requests]**. As the basis for your request, you state that **[insert basis for request]**. I would like to express my sincere appreciation for your effort in bringing these matters to my attention.

Your request to **[insert request for immediate action]** at **[insert facility name]** is **[granted or denied]** because **[staff to provide explanation]**.

As provided by Section 2.206, we will take action on your request within a reasonable time. I have assigned **[first and last name of petition manager]** to be the petition manager for your petition. Mr. **[last name of petition manager]** can be reached at **[301–415–extension of petition manager]** Your petition is being reviewed by **[organizational units]** within the Office of **[name of appropriate Office]. If necessary, add**: I have referred to the NRC Office of the Inspector General (OIG) those allegations of NRC wrongdoing contained in your petition. I have enclosed for your information a copy of the notice that is being filed with the Office of the *Federal Register* for publication. I have also enclosed for your information a copy of Management Directive 8.11 on the public petition process.

Sincerely,

[Office Director]

Enclosures: *Federal Register* Notice
Management Directive 8.11 re: Petition Process

cc: **[Licensee (w/copy of incoming 2.206 request) & Service List]**

Exhibit 2

[7590–01–P]

Sample *Federal Register* Notice

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

RECEIPT OF REQUEST FOR ACTION UNDER 10 CFR 2.206

Notice is hereby given that by petition dated [**insert date**], [**insert petitioner's name**] (petitioner) has requested that the NRC take action with regard to [**insert facility or licensee name**]. The petitioner requests [**state petitioner's requests**].

As the basis for this request, the petitioner states that [**state petitioner's basis for request**].

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of [**insert action office**]. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. [**If necessary, add**] By letter dated _____, the Director (**granted or denied**) petitioner's request for [**insert request for immediate action**] at [**insert facility/licensee name**]. A copy of the petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001.

FOR THE NUCLEAR REGULATORY COMMISSION

[**Office Director**]

Dated at Rockville, Maryland

This _____ day of _____, 1999.

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Exhibit 3

Sample One Step Acknowledgment / Denial Letter

[Insert petitioner's name & address]

Dear **[insert petitioner's name]**:

In a letter dated **[insert date]**, to **[OEDO/or addressee, NRC]**, signed by you and submitted pursuant to 10 CFR 2.206, you requested that the NRC order the **[insert facility or licensee name]** to be immediately shut down and remain shut down until either (1) all of the failed fuel assemblies are removed from the reactor core, or (2) the plant's design and licensing bases are properly updated to reflect continued operation with failed fuel assemblies. Attached to the petition was a copy of a report dated April 2, 1998, titled "Potential Nuclear Safety Hazard – Reactor Operation With Failed Fuel Cladding."

The attached report, asserts that existing design and licensing requirements for nuclear power plants preclude their operation with known fuel cladding leakage. The report recommends that the NRC take steps to prohibit nuclear power plants from operating with fuel cladding damage and specifically recommends that plants be shut down when fuel leakage is detected. The report also recommends that safety evaluations be included in plant licensing bases that consider the effects of operating with leaking fuel to justify operation under such circumstances.

Your petition stated that, because **[insert facility or licensee name]** was operating with known fuel damage, it is possible that significantly more radioactive material would be released to the reactor coolant system during a transient or accident than during steady-state operation; therefore, the design-basis accident analysis does not bound operation with known fuel cladding failures. In addition, the petition stated that the licensee appeared to be violating its licensing basis for worker radiation protection under the as low as is reasonably achievable (ALARA) program because industry experience has demonstrated that reactor operation with failed fuel cladding increases radiation exposure for plant workers.

The NRC has been observing the licensee's response to this issue since the licensee first received indication on March 25, 1999, of a potential leaking fuel rod on Unit 1. The licensee reviewed radiochemistry data that indicated the integrity of the fuel cladding had been compromised. Subsequent analysis revealed an increase in the dose-equivalent iodine that remained significantly below the limit allowed by technical specifications. After locating the leaking fuel assembly, the licensee suppressed the flux around the bundle by fully inserting three adjacent control rods. The staff finds the licensee's actions timely and appropriate.

Exhibit 3 (continued)

As you noted in your petition, you have previously submitted petitions on the **[insert facility or licensee name]** nuclear plant(s) after learning that these plants were operating with known fuel leakage. These petitions also based the requested actions on your report of April 2, 1998. The NRC responded to these petitions by a director's decision dated April 18, 1999, which is provided as an enclosure to this letter. In its decision, the staff presented its evaluation of the report which addressed the generic safety concerns for plants operating with known fuel cladding leakage. The staff concluded that operation with a limited amount of leaking fuel is within a plant's licensing basis and, in itself, does not violate ALARA-related regulations. We have compared the staff's evaluation in that director's decision against the plant-specific situation at **[insert facility or licensee name]** and have determined that the generic conclusions are applicable.

We have reviewed your letter of April 5, 1999, and find that the issues raised in the petition have been addressed in the director's decision dated April 18, 1999. The petition does not raise any significant new information about safety issues which were adequately addressed in the director's decision issued before and, therefore, does not meet the criteria for consideration under 10 CFR 2.206.

Thank you for bringing these issues to the NRC. I trust that this letter and the enclosed director's decision are responsive to your concerns.

Sincerely,

[Insert Division Director's Name]

[Office of [insert Division's Name]

Docket Nos. [50-, 50-]

Enclosure: Director's Decision 99-08

cc w/encl: See next page

Exhibit 4

[7590–01–P]

Sample *Federal Register* Notice for Director's Decision

U.S. NUCLEAR REGULATORY COMMISSION

Docket No(s).

License No(s).

[Name of Licensee]

NOTICE OF ISSUANCE OF DIRECTOR'S DECISION UNDER 10 CFR 2.206

Notice is hereby given that the Director, **[name of office]**, has issued a director's decision with regard to a petition dated **[insert date]**, filed by **[insert petitioner's name]**, hereinafter referred to as the "petitioner." The petition concerns the operation of the **[insert facility or licensee name]**.

The petition requested that **[insert facility or licensee name]** should be **[insert request for enforcement action]**. **[If necessary, add]** The petitioner also requested that a public hearing be held to discuss this matter in the Washington, DC, area.

As the basis for the **[insert date]** request, the petitioner raised concerns stemming from **[insert petitioner's supporting basis for the request]**. The **[insert petitioner's name]** considers such operation to be potentially unsafe and to be in violation of Federal regulations. In the petition, a number of references to **[insert references]** were cited that the petitioner believes prohibit operation of the facility with **[insert the cause for the requested enforcement action]**.

The petition of **[insert date]** raises concerns originating from **[insert summary information on more bases/rationale/discussion and supporting facts used in the disposition of the petition and the development of the director's decision]**.

Exhibit 4 (continued)

On **[insert date]**, the NRC conducted a meeting regarding **[insert facility or licensee name]**. The meeting gave the petitioner, the licensee, and the public an opportunity to provide additional information and to clarify issues raised in the petition.

The Director of the Office of **[name of office]** has determined that the request(s), to require **[insert facility or licensee name]** to be **[insert request for enforcement action]**, be **[granted/denied]**. The reasons for this decision are explained in the director's decision pursuant to 10 CFR 2.206 **[Insert DD No.]**, the complete text of which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555-0001, and at the local public document rooms located at the **[insert the local public document room information for the licensee]**. The director's decision is available via the NRC Home Page on the World Wide Web at the following address: *http://www.nrc.gov/NRC/PUBLIC/2206/index.html*.

A copy of the director's decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the director's decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this **[insert date]** day of **[insert month, year]**.

FOR THE NUCLEAR REGULATORY COMMISSION

Original Signed By

[Insert Office Director's Name]
Office of **[insert Office Name]**

[FR Doc. 99–25976 Filed 10–6–99; 8:45 am]
BILLING CODE 7590–01–C

POSTAL RATE COMMISSION

[Docket No. MC2000–1; Order No. 1264]

Mail Classification Case

AGENCY: Postal Rate Commission.

ACTION: Notice of initiation of experimental mail classification docket.

SUMMARY: This document provides notice that the Commission has established a new docket to consider a proposed two-year experiment allowing certain Standard class mail to ''ride along'' in Periodicals class mail for a flat charge of 10 cents. It also addresses related procedural matters, such as expedition, waiver of certain filing requirements, and settlement discussions. This notice and the related directives will allow the Service's proposal to be considered expeditously.

DATES: The deadline for intervention is October 25, 1999. Certain responses are due October 25, 1999. A prehearing conference is scheduled for October 28, 1999.

ADDRESSES: Send communications regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6820.

SUPPLEMENTARY INFORMATION: On September 27, 1999, the United States Postal Service filed, pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.*, a request with the Postal Rate Commission for a recommended decision on a proposed two-year experimental classification change affecting all subclasses of Periodicals mail. The request includes a corresponding rate change. Request of the United States Postal Service for a Recommended Decision on an Experimental ''Ride-Along'' Classification and Rate for Periodicals Mail (''Request'').

Contents of the Filing

The Service's request includes five attachments. Attachments A and B, respectively, consist of proposed changes to Domestic Mail Classification Schedule (DMCS) section 443 and proposed changes to Periodicals rate schedules. Attachment C is the certification required by Commission rule 54(p). Attachment D is an index of testimony, exhibits and workpapers (indicating there are no workpapers). Attachment E is a detailed statement regarding compliance with Commission rules 54, 64 and 67.

The request is supported by the testimony of witness Taufique of the Postal Service (USPS–T–1) and industry witness Schwartz (USPS–T–2). Witness Taufique explains the current treatment accorded Standard (A) attachments or enclosures in Periodicals mail. He also describes how the instant proposal would change the traditional treatment. Taufique also estimates the impact of the proposal on postal revenues and costs; addresses the consistency of the proposal with relevant statutory criteria; and presents the data collection plan. *See* USPS–T–1.

Witness Schwartz describes advertisers' generally negative reaction to proposals that include payment of Standard (A) postage for ''Ride-Along''-type advertisements. USPS–T–2 at 1–2. He also testifies that his experience leads him to believe that the proposed experimental rates could produce substantial new volume. *Id.* at 3.

Related Documents

Along with its request, the Service filed a contemporaneous motion seeking expedition of the proceeding and waiver of certain filing requirements. It also filed a proposed stipulation and agreement. Motion of the United States Postal Service for Expedition and for Waiver of Certain Provisions of Rule 64(h) (''Procedural Motion''); [Proposed] Stipulation and Agreement (''Proposed Agreement'').

The Service's request and related documents are on file in the Commission's docket room and are available for inspection during the Commission's regular business hours. They also have been posted on the Commission's website (www.prc.gov).

Description of the Request

The Postal Service proposes to test charging a flat, or uniform, rate of 10 cents when a qualifying Standard (A) piece ''rides along'' in Periodicals mail. This rate would be assessed in addition to postage on the host Periodicals piece. Neither the weight nor the content of the ''ride-along'' piece would affect the rate of the Periodicals host copy. USPS–T–1 at 3.

The filing indicates that the proposed charge is expected to be lower than the rate that would be charged for the Standard (A) piece if it traveled on a separate or ''standalone'' basis. Revenues and costs associated with the ''ride-along'' would be reported with Periodicals revenues and costs. *Id.*

Restrictions

The proposed change is limited to one Standard (A) enclosure or attachment per periodical. The Service indicates that this limitation is to ensure that the unique characteristics of Periodicals are maintained while providing an effective medium for targeted advertising. The enclosure also must meet physical criteria ensuring that neither the shape nor the machinability of the host piece would be altered. For example, the weight of the ''ride-along'' piece cannot exceed the weight of the host piece, nor exceed 3.3 ounces on its own. *Id.* at 4.

Effect on Other Attachments and Enclosures in the Host Piece

As indicated, only one ''ride-along'' piece would be allowed per each copy of a Periodical under the Service's proposal. However, mailers could continue to pay Standard (A) rates for other eligible Standard (A) attachments or enclosures in a periodical. *Id.* at 3.

Duration of the Experiment

The Postal Service proposes a two-year experimental period, starting as of an effective date established by the Governors of the Postal Service.

Rationale for the Proposal and Experimental Objectives

The Service expects the experimental classification change to provide a cost-effective method to mail what are now Standard (A) supplements, including very small product samples, to targeted markets. *Id.* at 4. Also, the Service notes that the current arrangement for Standard (A) enclosures in a periodical assumes two separate mailings, whereas only one is actually processed and delivered. *Id.* The Service contends that as long as the shape and automation compatibility of the host piece are not affected by the inclusion of the ''ride-along'' piece, presumably any additional cost would be caused only by the additional weight of the ''ride-along'' piece. *Id.*

With respect to the 10-cent charge, the Service notes, among other things, that the physical requirements for the ''ride-along'' piece have been drafted to attempt to ensure that the inclusion of the piece does not result in any additional mail processing or delivery costs. It therefore asserts that the proposed rate ''should comfortably cover any additional cost due to incremental weight, and also provide contribution that comfortably exceeds the contribution deemed reasonable for the Periodicals subclass.'' *Id.* at 5.

The Service says one objective of the experiment is to gauge the reaction of advertisers and publishers to the classification change. *Id.* at 9. It says another is to determine the impact of ''ride-along'' pieces on Periodicals costs. *Id.* at 10.

Revenue and Cost Impact

Based on several assumptions, the Service estimates net additional revenue resulting from the proposed change of about $4.8 million. *Id.* at 9. With respect to costs, the Service anticipates ''minimal'' impact. In support of this assessment, it notes that the cost (if any) of a current Standard (A) enclosure or attachment (estimated at about 25 million pieces) is already captured with Periodicals costs. *Id.* It also says that the only potential additional cost would be caused by the additional weight, as piece-related costs, either in mail processing or delivery, are not expected to change due to the physical requirements.

Relationship to Postal Policies

The Service asserts that the requested classification change will further the general policies of efficient postal operations and reasonable rates and fees enunciated in the Postal Reorganization Act. Request at 2. The Service also says the change conforms with the criteria of 39 U.S.C. 3623(c) and section 3622(b). *Id.*

Data Collection Plan

The proposed data collection plan is described in Attachment A to USPS–T–1. Among other things, it includes use of an alternate mailing statement for mailers intending to mail ''ride-along'' pieces during the experiment. USPS–T–1 at 12. Participating mailers also will be required to provide a sample of the mailpiece, an additional copy of the mailing statement, and a response to a questionnaire. *Id.* at 12–13.

The Service indicates that it expects diversion from other mail classes to be minimal, given that ''ride-along'' pieces historically have been designed to be included in Periodicals. *Id.* at 13. However, the Service says it is planning to conduct a survey of advertisers to estimate any such diversion.

Rationale for Seeking Expedition

In support of its motion seeking expedition and waiver of filing requirements, the Service notes that the minor, experimental change it is requesting is fully explained in witness Taufique's testimony. It also states that Taufique's testimony indicates that the proposed change will have an insignificant effect on the Postal Service's overall volumes, revenues and costs. Moreover, based on discussions with the Periodicals industry, the Service says it expects industry support and believes there is a ''concrete potential'' for settlement. The Service asserts that there should not be any significant adverse effect on competitors.

With respect to expedition, the Service does not request specific dates, but proposes adoption of several procedural steps. One is a relatively short intervention period, based on the assumption that many interested parties already are aware of the proposal. Another is that participants be required, in their notices of intervention, to indicate whether they request a hearing and, if so, to delineate those issues which they believe to be of sufficient, material import to warrant a hearing. (If there is no request for a hearing, or if the Commission determines that there are no genuine issues of material fact, the Service suggests that the Commission can dispense with discovery and hearings, as contemplated by rule 67a.)

The Service also requests that the Commission authorize scheduling of a settlement conference as quickly as possible following the deadline for intervention. It notes that promptly reaching a settlement will obviate the need for most, if not all, subsequent procedural steps. Procedural Motion at 4. However, the Service asks that if discovery is found necessary, the time allotted for such be abbreviated. In support of this approach, it notes that with only two pieces of testimony, no library references, and no workpapers, ''abridged and expedited discovery should not be an issue.'' *Id.* Finally, the Service notes that other procedures, such as briefs and oral argument, may be able to be eliminated. *Id.*

Rationale for Seeking Waiver of Filing Requirements

In support of waiver, the Service notes that Attachment E to its request demonstrates compliance with a number of the requirements of rules 54 and 64. For other requirements, however, the Service seeks waiver under rule 64(h)(3), which provides that the Commission may waive certain filing requirements if it determines that the proposed change does not significantly change the rates and fees and cost-revenue relationships referred to in rule 64(h)(1). Rule 64(h)(1) states that the Postal Service, when requesting a change in the classification schedule, must provide certain rule 54 information concerning requests for changes in postal rates and fees if the proposed classification change would result in either changes in the rates or fees for any existing class or subclass of mail and service; the establishment of a new class, subclass or service for which rates are to be established; a change in the relationship of costs to revenues for any class or subclass; or a change in the relationship of total Postal Service costs to total revenues.

Addressing these points, the Service asserts that the proposed change does not alter the existing rates and fees for Periodicals; one enclosure per Periodical will be allowed to travel at a different rate than previously; those enclosures currently travel at Standard (A) rates; and under the proposal will pay a uniform ten cents per piece.

The Service also states that the proposed change does not create a new subclass or service, but simply adds a new part to section 443 of the DMCS and Periodicals rate schedules that will specify the proposed flat charge for enclosures. The Service notes that Periodicals subclasses will exist as they did before and enclosures will be allowed, as they are now. However, it says that enclosures meeting certain physical requirements will be able to travel at a different postage charge.

Further, the Service says the effects of the proposed changes on the relationships between costs and revenues for postal classes, subclasses and services, or the postal system as a whole will not be altered in a significant way. Under the proposal, revenues from the experimental enclosures will be credited to Periodicals, rather than to Standard A (as they are when the enclosures travel at the Standard (A) rate). *Id.* at 5. The Service says: ''It is hoped that this will boost the cost coverage for Periodicals, but it should not make a major change due both to the experimental nature of the proposal, and due to the physical criteria and limit of one enclosure per Periodical proposed.'' *Id.* at 6. Also, the Service says that any diminution in the Standard (A) cost coverage as a result of the revenues for the experimental enclosures being credited to Periodicals will be insignificant. *Id.* The Service acknowledges that it anticipates that there may be some revenue loss for the postal system as a whole because the applicable Standard (A) rate for an enclosure normally would be more than ten cents, but this loss should be minimal. The Service says it anticipates that the lower rate will attract new volumes, generating new revenue which could more than offset any loss. It estimates the maximum revenue loss resulting from the proposed experimental change at approximately $5.5 million, and the new revenues generated at approximately $10.2 million, for a net gain of $4.8 million. *Id.*

Proposed DMCS Changes

The proposed DMCS changes entail the addition of a new provision

(proposed § 443.1a) captioned ''Ride-Along Attachments and Enclosures.'' It reads:

''Ride-Along'' Attachments and Enclosures. A limit of one Standard Mail piece, not exceeding the weight of the host copy and weighing a maximum of 3.3 ounces, from any of the subclasses listed in section 321 (Regular, Enhanced Carrier Route, Nonprofit or Nonprofit Enhanced Carrier Route) may be attached to or enclosed with an individual copy of Periodicals Mail for an additional postage payment of ten cents. Periodicals containing ''Ride-Along'' attachments or enclosures must maintain uniform thickness as specified by the Postal Service. The Periodicals piece with the ''Ride-Along'' must maintain the same shape and automation compatibility as it had before addition of the ''Ride-Along'' attachment or enclosure and meet other preparation requirements as specified by the Postal Service.

This provision expires [insert date corresponding to two years after its effective date.]

Corresponding changes to Periodicals rate schedule 421, 423.3, 423.4, 423.2 are effected through the addition of a new note stating: ''For a Ride-Along item enclosed with or attached to a periodical, add $0.10 per copy (experimental).''

Proposed Stipulation and Agreement

The proposed agreement the Service filed along with its request consists of two parts. Part I, captioned Background, notes the date of filing of the Service's request, its designation as Docket No. MC2000–1, and related matters. Part II, Terms and Conditions, consists of ten numbered paragraphs. The matters covered therein address issues such as the evidentiary record and the extent to which signatories are bound by the agreement. Interested participants are referred to the full text of the agreement for further details.

Intervention

Those wishing to be heard in this matter are directed to file a written notice of intervention with Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001, on or before October 25, 1999. Notices should indicate whether participation will be on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a.

Appropriateness of Proceeding Under Experimental Rules

The Service has requested that the Commission handle this case under Commission rules 67–67d. In determining whether these procedures are appropriate, the Commission will consider: (1) The novelty of the proposed change; (2) the magnitude of the proposed change; (3) the ease or difficulty of collecting data on the proposed change; and (4) the duration of the proposed change.

Participants are invited to comment on whether the Postal Service's request should be evaluated under rules 67–67d. Comments are due on or before October 25, 1999. Pending the Commission's determination on this matter, participants should adopt the working assumption that the Service's motion seeking application of the experimental rules will be granted.

Rule 67a provides a procedure for limiting issues in experimental cases. To enable participants to evaluate whether genuine issues of fact exist, the Postal Service shall respond to discovery requests within 10 days. Written discovery pursuant to rules 25–28 may be undertaken immediately upon intervention.

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings has not been made yet. Participants wishing to comment on this question should include in their notices of intervention a statement of issues raised by the Service's request. Participants should also designate therein those issues involving questions of material fact which they believe require trial-type hearings. The Postal Service and any interested participant should be prepared to discuss these statements and designations at the prehearing conference.

Representation of the General Public

In conformance with section 3624(a) of title 39, the Commission designates Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, will supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(c) (39 CFR 3001.10(c)).

Prehearing Conference

A prehearing conference will be held on Thursday, October 28, at 11 a.m. in the Commission's hearing room.

Authorization of Settlement Proceedings

The Commission is authorizing settlement proceedings. It appoints Ted P. Gerarden, the director of the OCA, as settlement coordinator. Formal discussions may begin immediately after the close of the intervention period and, preferably, should be held prior to the prehearing conference on October 28, 1999.

It is ordered:

1. The Commission establishes docket no. MC2000–1, Experimental ''Ride-Along'' Classification Change for Periodicals, to consider the request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention are to be filed no later than October 25, 1999.

4. Participants are directed to include in their notices of intervention statements of issues and designations of issues requiring trial-type proceedings. Those intending to respond to such statements or designations should be prepared to do so at the prehearing conference.

5. Answers to the Postal Service's motion to expedite the proceeding and for waiver of certain filing requirements are due no later than October 25, 1999.

6. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.

7. The Commission will hold a prehearing conference on Thursday, October 28, 1999, at 11 a.m. The conference will be held in the Commission's hearing room.

8. The Commission authorizes settlement negotiations, and encourages that these begin at the earliest opportunity following the deadline for intervention and, preferably, prior to the prehearing conference.

9. Mr. Gerarden is appointed to serve as settlement coordinator in this proceeding.

10. The Secretary of the Commission shall cause this notice and order to be published in the **Federal Register**, in accordance with applicable requirements.

(Authority: 39 U.S.C. 3622)

Dated: October 1, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–26113 Filed 10–6–99; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Statement of Authority to Act for Employee.

(2) *Form(s) submitted:* SI–10.

(3) *OMB Number:* 3220–0034.

(4) *Expiration date of current OMB clearance:* 12/31/1999.

(5) *Type of request:* Extension of currently approved collection.

(6) *Respondents:* Individuals or Households, Business or other for-profit.

(7) *Estimated annual number of respondents:* 400.

(8) *Total annual responses:* 400.

(9) *Total annual reporting hours:* 40.

(10) *Collection description:* Under 20 CFR 335.2, the Railroad Retirement Board (RRB) accepts claims for sickness benefits by other than the sick or injured employees, provided the RRB has the information needed to satisfy itself that the delegation should be made.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–26173 Filed 10–6–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24068; 812–11788]

The Infinity Mutual Funds, Inc., et al., Notice of application

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of an interim investment advisory agreement (''Interim Advisory Agreement'') and interim subadvisory agreements (''Interim Subadvisory Agreements'') (collectively, ''Interim Agreements'') for a period of up to 150 days beginning on the later of the date of a change in control of First American National Bank (''Adviser'') or the date the requested order is issued and continuing until the date the Interim Agreements are approved or disapproved by shareholders of the investment company (but in no event later than March 31, 2000) (''Interim Period''). The order also would permit the Adviser and Subadvisers (as defined below) to receive all fees earned under the Interim Agreements during the Interim Period following shareholder approval.

APPILCANTS: Infinity Mutual Funds, Inc. (''Company''), Adviser, Bennett Lawrence Management, LLC (''Bennett Lawrence''), Lazard Asset Management (''Lazard'') and Womack Asset Management, Inc. (''Womack'' together with Bennett Lawrence and Lazard, the ''Subadvisers'').

FILING DATE: The application was filed on September 24, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 1999 and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o David Stephens, Esq., Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York, 10038.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company is a Maryland corporation registered under the Act as an open-end management investment company. The Company currently offers 21 series advised by the Adviser (the ''Funds''). The Adviser serves as investment adviser to the Funds pursuant to an investment advisory agreement (''Existing Advisory Agreement''). Womack provides subadvisory services to the ISG Small-Cap Opportunity Fund pursuant to a separate agreement with the Adviser (''Existing Womack Subadvisory Agreement''), Bennett Lawrence provides subadvisory services to the ISG Mid-Cap Fund pursuant to a separate agreement with the Adviser (''Existing Bennett Subadvisory Agreement''), and Lazard provides subadvisory services to the ISG International equity Fund pursuant to a separate agreement with the Adviser (''Existing Lazard Subadvisory Agreement'' together with the Existing Womack Subadvisory Agreement and the Existing Bennett Subadvisory Agreement, the ''Existing Subadvisory Agreements'').

2. The Adviser, a national banking association, is a wholly-owned subsidiary of First American Corporation (''First American''), a registered bank holding company, and is exempt from the registration requirements of the Investment Advisers Act of 1940 (''Advisers Act''). Womack, Bennett Lawrence, and Lazard are investment advisers registered under the Advisers Act.

3. First American, the parent company of the Adviser, and AmSouth Bancorp (''AmSouth''), a bank holding company, have agreed to a merger whereby First American will be merged with and into AmSouth (the ''Transaction''). The Transaction is currently expected to be consummated on or about October 4, 1999.

4. Applicants state that the Transaction will result in an assignment and thus automatic termination of the Existing Advisory Agreement and could be deemed to result in an assignment and termination of the Existing Subadvisory Agreements. Applicants request an exemption to: (i) Permit the Adviser to provide investment advisory services to the Funds pursuant to the

Interim Advisory Agreement and the Subadvisers to provide subadvisory services to the relevant Funds pursuant to the Interim Subadvisory Agreements during the Interim Period without obtaining prior shareholder approval, and (ii) permit the Adviser and the Subadvisers to receive fees earned under the respective Interim Agreements with respect to each Fund during the Interim Period if, and to the extent that, the Interim Agreements are approved by the shareholders of the Funds. The requested exemption would cover an Interim Period commencing on the later of the date the Transaction is consummated or the date the requested order is issued and continuing until the Interim Agreements are approved or disapproved by the Funds' shareholders (but in no event later than March 31, 2000).[1] Applicants state that the Interim Agreements will have the same terms and conditions as the Existing Advisory Agreement and the Existing Subadvisory Agreements except for the effective dates and escrow provisions.

5. On September 22, 1998, the Company's board of directors (''Board''), including a majority of directors who are not ''interested persons'' of the Company, as that term is defined in section 2(a)(19) of the Act (the ''Independent Directors''), held an in-person meeting in accordance with section 15(c) of the Act to evaluate whether the terms of the Interim Agreements are in the best interests of the Funds and their shareholders and to approve the Interim Agreements. Proxy materials seeking the approval of the Interim Agreements are expected to be mailed to shareholders of each Fund on or about January 2, 2000.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (''Escrow Agent''). The fees payable to the Adviser and Subadvisers during the Interim Period under the Interim Agreements will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The Escrow Agent will release the amounts held in the escrow account (including any interest earned): (a) To the Adviser and Subadvisers only if shareholders of the applicable Fund approve the Interim Agreements or (b) to the applicable Fund if the Interim Period has ended and the Interim Agreements have not been approved by the requisite shareholder vote. The Escrow Agent will release the moneys as provided only upon receipt of a certificate from officers of the Company that the action is appropriate based on shareholder votes. Because any such certificate is sent, the Independent Directors of the Company will be notified.

[1] Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Adviser and Subadviser will serve after the consummation of the Transaction and prior to the issuance of the order in a manner consistent with their fiduciary duties to provide investment advisory and subadvisory services to the Funds even though approval of the Interim Agreements has not yet been secured from the Funds' shareholders. Applicants also state that, in such event, the Adviser and Subadvisers will be entitled to receive from the Funds, with respect to the period from the date of consummation of the Transaction until the issuance of the order, no more than the actual out-of-pocket costs to the Adviser and Subadvisers for providing investment advisory services to the Funds.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Transaction will result in an ''assignment'' of the Existing Advisory Agreement and could be deemed to result in an ''assignment'' of the Existing Subadvisory Agreements and that the Existing Advisory Agreement and Existing Subadvisory Agreements will terminate according to their terms.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that because of the benefits to First American, the Adviser's parent, arising from the Transaction, applicants, cannot rely on rule 15a–4.

3. Section 6(c) provides that the Commission may exempt any person, security, or transaction, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Transaction were determined in response to a number of business factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the Interim Agreements before the Transaction is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment advisory and subadvisory services to the Funds during the period following consummation of the Transaction. Applicants represent that, under the Interim Agreements during the Interim Period, the Funds will receive substantially identical investment advisory and subadvisory services, provided in substantially the same manner, as they received prior to the consummation of the Transaction. Applicants state that, in the event of any material change in personnel of the Adviser or the Subadvisers providing services pursuant to the Interim Agreements during the Interim Period, the Adviser and the Subadvisers will apprise and consult the Board to assure that the Board, including a majority of the Independent Directors, is satisfied that the services provided by the Adviser and the Subadvisers will not be diminished in scope and quality.

Applicants' Conditions

The Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The Interim Agreements will have the same terms and conditions as the respective Existing Advisory Agreement and Existing Subadvisory Agreements, except for their effective dates and escrow provisions.

2. Fees earned by the Adviser and Subadvisers in respect of the relevant Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such fees) will be paid to (a) the Adviser and Subadvisers in accordance with the Interim Agreements, only after the requisite approvals are obtained, or

(b) the respective Fund, in absence of such approval with respect to such Fund.

3. The Company will hold meetings of shareholders to vote on approval of the Interim Agreements within the Interim Period (but in no event later than March 31, 2000).

4. The Adviser or an entity controlling, controlled by, or under common control with the Adviser, not the Funds, will bear the costs of preparing and filing the application and the costs relating to the solicitation of shareholder approval of the Funds necessitated by the Transaction.

5. The Adviser and Subadvisers will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Company's Board, including a majority of the Independent Directors, to the scope and quality of services previously provided under the Existing Advisory Agreement and Existing Subadvisory Agreements. If personnel providing material services during the Interim Period change materially, the Adviser and Subadvisers, as the case may be, will apprise and consult with the Board to assure that the Directors, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26153 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24065; 812–11242]

Merrill Lynch, Pierce, Fenner & Smith Incorporated; Notice of Application

September 30, 1999

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from section 12(d)(1) of the Act and under section 6(c) of the Act for an exemption from section 14(a) of the Act.

SUMMARY OF APPLICATION: Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch'') requests and order with respect to the Exchangeable Preferred Trusts and future trusts that are substantially similar and for which Merrill Lynch will serve as a principal underwriter (''Trusts'') that would (i) permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act, to own a greater percentage of the total outstanding voting stock (''Securities'') of any Trust than that permitted by section 12(d)(1) and (ii) exempt the Trusts from the initial net worth requirements of section 14(a). Merrill Lynch also requests an order to amend a prior order (''Prior Order'').[1]

FILING DATES: The application was filed on August 3, 1998. Applicant has agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 25, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests would state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, World Financial Center, North Tower, 250 Vesey Street, New York, New York 10281–1318.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

[1] *Merrill Lynch, Pierce Fenner & Smith Incorporated and Merrill Lynch Government Securities, Inc.*, Investment Company Act Release Nos. 22758 (July 22, 1997) (notice) and 22789 (Aug. 18, 1997) (order).

Applicant's Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. Merrill Lynch or an entity controlling, controlled by, or under common control with Merrill Lynch will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) or placement agent of the Securities. Each Trust will issue Securities that are exchangeable or redeemable for non-cumulative preferred shares (''Shares'') of a non-United States issuer (the ''Share Issuer''). The Securities may be issued through either a public or a private offering.[2]

2. Each Trust will, at the time of the issuance of its Securities, invest the proceeds in and hold debt securities (''Debt Securities'') issued by a special purpose entity (''Debt Securities Issuer'').[3] Each Trust's investment objective will be to distribute to the holders of the Securities (''Holders'') (i) pro rata the interest the Trust receives on the Debt Securities from time to time and (ii) the ultimate proceeds of the redemption of the Debt Securities upon the occurrence of certain events (''Exchange Events'') which will be specified in the agreement establishing the terms of each Trust and the Debt Securities or the instrument or agreement, if any, pursuant to which the Debt Securities are issued. Proceeds will consist of (i) Shares, (ii) depositary shares (''Des'') representing Shares, (iii) cash from the redemption or repurchase of Shares by the Share Issuer, or (iv) any combination of the above (''Proceeds'').[4] The Share Issuer will determine the composition of the Proceeds following an Exchange Event. No other party has discretion to vary the composition of the Proceeds.[5] A Trust will dissolve on or shortly after the occurrence of an Exchange Event.

3. Applicant states that the Trusts' structure is designed to enable the applicable Share Issuer to issue Shares on the date that the Securities are issued. If the Share Issuer is a bank, this

[2] Applicants also seek to amend the Prior Order to state that Securities issued by Structured Yield Products Exchangeable for Stock Trusts (''Structured Yield Trusts'') may be offered in private placements as well as in public offerings.

[3] All of the capital stock of the Debt Securities Issuer will be owned by a charitable trust.

[4] Pursuant to the terms of the Shares, the Share Issuer may be entitled to redeem or repurchase the Shares for cash, subject to regulatory consent or requirement, at its discretion after a designated date or earlier upon certain tax, regulatory or other specified events.

[5] The Share Issuer may provide cash in lieu of fractional shares or make other antidilution or similar arrangements.

structure allows the bank to raise regulatory capital. In addition, by providing a method of making scheduled payments to Holders in lieu of dividends on Shares, the structure enables such payments to be deductible by the Share Issuer for tax purposes under the law of its jurisdiction of organization and/or applicable tax treaty.

4. No Debt Securities will be issued to any other party. The Debt Securities will be issued only in bearer form, will be denominated in and pay interest at a designated annual rate in U.S. dollars and, unless redeemed because of an Exchange Event, will be redeemed on their designated maturity date.

5. The Debt Securities Issuer will use the proceeds from the sale of the Debt Securities to purchase, at a price equal to their liquidation preference, fully paid, non-dividend paying preference shares (''Subsidiary Preference Shares'') issued by another special purpose entity (the ''Subsidiary''). The Subsidiary will use the proceeds from the sale of the Subsidiary Preference Shares to make a payment to the Share Issuer in consideration for the issuance to the Subsidiary of Shares or DSs representing fully paid Shares. The Share Issuer will use the proceeds from the issue of the Shares to make a capital contribution to a business trust established under the laws of Delaware (the ''Distribution Trust''). The Distribution Trust will use the Share Issuer's capital contribution to make one or more loans to the Share Issuer and/or one or more of its wholly owned subsidiaries or branches (each a ''Borrower''). Interest payments on the loans to the Borrowers will be distributed by the Distribution Trust to the Debt Securities Issuer, which will in turn use such payment to pay interest on the Debt Securities and the operating expenses of the Trust, the Debt Securities Issuer, and its affiliates.

6. If the Securities are publicly offered, they will be listed on a national securities exchange or traded on the National Association of Securities Dealers Automated Quotation System. Thus, such Securities will be ''national market system'' securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the price of the underlying Shares, interest rates, and other factors affecting conditions and prices in the debt and equity markets.

7. If the Securities are not publicly offered, pricing and trading information will be that normally provided in the private markets. It is expected that the best source of such information will be available from the dealer or dealers making a market in the Securities. Whether or not the Securities are publicly offered, Merrill Lynch currently intends, but will not be obligated, to make a market in the Securities of each Trust.

8. Each Trust will be internally managed by its trustees and will not have any separate investment adviser. The trustees will have no power to vary the investments held by each Trust. Each Trust will adopt a fundamental policy that 100% of its portfolio will be invested in Debt Securities and that the Debt Securities may not be disposed of during the term of the Trust other than in connection with an Exchange Event. The day-to-day administration of a Trust will be carried out by a bank or trust company which also will act as custodian for the Trust's assets and as paying agent and registrar with respect to the Securities.

9. The trustees of each Trust will be selected initially by Merrill Lynch, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. The Holders will be entitled to a vote for each Security held on all matters to be voted on by the Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each trust may be changed only with the approval of a majority of the Trust's outstanding Securities or any greater number required by the Trust's constituent documents. Unless the Holders so request, it is not expected that the Trusts will hold any meeting of Holders, or that Holders will ever vote. The Subsidiary, as holder of the Shares or DSs, will or will cause the collateral agent to direct Shares to be voted as directed by the Holders on matters in which the Shares have a right to vote.

10. Each Trust's organizational costs will be paid directly or indirectly by the Share Issuer or an affiliate. Each Trust will be structured so that its ongoing expenses will not be borne by the Holders, but rather, directly or indirectly, by the parties to the transactions as will be described in the prospectus for the relevant Trust. At the time of the original issuance of the Securities of any Trust, there will be paid to the administrator, the custodian, and the paying agent, and to each trustee, fees over the term of the Trust. Such fees will be paid from the interest on the Debt Securities, which will be establish at a rate designed to provide a spread for the purpose of paying such expenses.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. A company that is excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for purposes of section 12(d)(1)(A)(i) of the Act under sections 3(c)(1) and 3(c)(7)(D) of the Act. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, such exemption is consistent with the public interest and protection of investors. Merrill Lynch requests an order under section 12(d)(1)(J) to permit other registered investment companies, and companies excepted from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act, to own a great percentage of the Securities of any Trust than that permitted by section 12(d)(1).[6]

3. Merrill Lynch states that, in order for the Trusts to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities of each Trust to be offered to large investment companies and investment company complexes. Merrill Lynch states that large investment companies and investment company complexes seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities that prove attractive. Conversely, it may not be economically rational for such investors, or their advisers to take the time to review an investment opportunity if the amount that they would ultimately be permitted

[6] The requested order also would amend the Prior Order to permit companies excepted from the definition of investment company by sections 3(c)(1) and 3(c)(7) of the Act to own a greater percentage of the Securities of any Structured Yield Trust than that permitted by section 12(d)(1) of the Act. In all other respects, the terms and conditions of the Prior Order are unchanged.

to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, Merrill Lynch argues that in order for the trusts to be economically attractive to large investment companies and investment company complexes, such investors must be able to acquire Securities in each Trust in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C).

4. Merrill Lynch states that section 12(d)(1) was enacted in order to prevent one investment company from buying control of other investment companies and creating complicated pyramidal structures. Merrill Lynch also states that section 12(d)(1) was intended to address two principal abuses: the ''pyramiding'' of control by fund-holding companies and the layering of costs to investors.

5. Merrill Lynch assets that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, Merrill Lynch argues that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trust that will require any investment companies owning voting stock of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) (including companies excepted from the definition of investment companies by section 3(c)(1) and 3(c)(7) of the Act) to vote their Securities in proportion to the votes of all other Holders. Merrill Lynch also states that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Merrill Lynch states that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and because generally these fees and expenses will be borne, directly or indirectly, by the Share Issuer or another third party, not by the Holders. In addition, the Holders will not, as a practical matter, because the organizational expenses (including underwriting expenses) of the Trusts. Merrill Lynch asserts that the organizational expenses will be borne by a Trust from the facility fee it receives in connection with the investment in Debt Securities. Thus, a Holder will not pay duplicative charges to purchase Securities in any Trust. Finally, there will be no duplication of advisory fees because the Trust will be internally managed by their trustees.

7. Merrill Lynch asserts that the investment product offered by the Trusts serves a valid business purpose. The Trusts, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, Merrill Lynch asserts that the Securities are intended to provide Holders with an investment equivalent to an investment in Shares, while providing the Shares Issuer with tax benefits normally associated with debt instruments.

8. Merrill Lynch believes that the purposes and policies of section 12(d)(1) are not implicated by the Trusts and that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

B. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of at least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 exempts from section 14(a) unit investment trusts that meet certain conditions in recognition of the fact that, once the units are sold, a unit investment trust requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a unit investment trust investing in eligible trust securities shall be exempt from the net worth requirement, provided that the trust holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Merrill Lynch argues that, while the Trusts are classified as management companies, they have the characteristics of unit investment trusts. Investors in the Trusts, like investors in a traditional unit investment trust, will not be purchasing interests in a managed pool of securities, but rather in a fixed and disclosed portfolio that is held until maturity. Merrill Lynch believes that the make-up of each Trust's assets, therefore, will be ''locked-in'' for the life of the portfolio, and there is no need for an ongoing commitment on the part of the underwriter.

3. Merrill Lynch states that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, or in a transaction exempt from such registration, and resulting in net proceeds to each Trust of at least $10,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters or placement agents will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, Merrill Lynch states that the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Merrill Lynch also does not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

4. Section 6(c) of the Act provides that the SEC may exempt persons or transactions if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Merrill Lynch requests that the SEC issue an order under section 6(c) exempting the Trusts from any requirements of section 14(a). Merrill Lynch believes that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act.

Applicant's Condition

Merrill Lynch agrees that the order granting the requested relief will be subject to the following condition:

1. Any investment company (including companies excepted from the definition of investment companies by sections 3(c)(1) and 3(c)(7) of the Act) owning voting stock of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust shares in proportion to the vote of all other Holders.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–26122 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41968; File No. SR–CHX–99–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating to Access to an After-Hours Trading Session

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On September 28, 1999, the Exchange filed an amendment to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to add new Article I.B. to provide rules that would govern access to the CHX trading floor (and related trading privileges) during an after-hours trading session (''E-Session'').[4] The text of the proposed rule change and Amendment No. 1 is available at the Exchange and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Alton S. Harvey, Chief, Office of Market Watch, Division of Market Regulation, SEC, September 27, 1999 (''Amendment No. 1''). In Amendment No. 1, the CHX proposes several technical amendments to its filing, including substituting the term ''E-Session'' for the term ''night trading'' and deleting all references to market makers.

[4] The Exchange is proposing these access rules at this time so that they will be in place if the Exchange's filing, submitted under separate cover, to initiate an E-Session, is approved by the Commission. *See* File No. SR–CHX–99–16, currently pending with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to include provisions for persons desiring to obtain trading privileges for an E-Session that would operate after the Primary Trading Session and Post Primary Trading Session. At this time, the Exchange is only proposed rules relating to trading privileges and is not proposing any trading rules.

Under the proposed rules, a person or entity may access the E-Session through his or its own existing Exchange membership or by leasing the rights to a membership. The rights and privileges that can be leased for the E-Session will be limited to access rights to the trading floor during the E-Session in the capacity of a floor broker or co-specialist only (''night trading privileges''). To lease the E-Session trading privileges of a membership, a person or entity would be required to register with and be approved by the Exchange as a member or member organization under the Exchange's Constitution and Rules. The lessee would not be entitled to sublease the privileges and rights and would not be able to vote such interest.[5] Further, the lessee of the E-Session trading privilege will be required to provide proof of an agreement with a registered clearing firm that is approved by the Exchange and provide evidence that such clearing firm will guarantee the lessee's obligations for any and all losses incurred through his or its lease of the E-Session trading privileges.[6] The lessee will be required to execute a lease agreement (which would be required to be approved by the Exchange) in which the lessee must make certain representations with respect to the rights and privileges acquired. The lessee shall be considered a ''member'' or ''member organization'' for purposes of the federal securities laws, and the Exchange's Certificate of Incorporation, Constitution and Rules, except in certain circumstances set forth in the rules.

With respect to lessors, the proposed rules would require that the lessor be either: (i) An Approved Lessor, as defined in Article I.A of the Exchange rules; (ii) a member of member organization that leases its membership privileges to a lessee for the Primary Trading Session; or (iii) a member or member organization that owns a membership and uses the membership for his or its own purposes during the Primary Trading Session.

Finally, the proposed rules would permit the Exchange to terminate the E-Session trading privileges if the Exchange determines that it is in the best interests of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[5] The voting right would be retained by the person who is designated as the Voting Designee on the seat.

[6] With respect to a person leasing a membership for the Primary Trading Session, the membership is considered an asset of the lessee and, therefore, the Exchange may sell the membership to satisfy any debts of such person. Because the membership is viewed as an asset of the person leasing the membership during the Primary Trading Session, it will not be viewed as an asset of the person leasing the membership during the E-Session, unless such person is leasing the membership for both the Primary Trading Session and the E-Session.

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–08 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26155 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41969; File No. SR–CHX–99–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to ''Stop'' and ''Stop Limit'' Orders

September 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on August 27, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article XX, Rule 28A to the Exchange's Rules relating to ''stop'' and ''stop limit'' orders to clarify that the existing Rule 28 of Article XX relates solely to ''stopped'' orders. Below is the text of the proposed rule change. Proposed new language is in *italics.*

Chicago Stock Exchange Rules

Article XX

Rule 28A Stop Orders

(a) Dual Trading System Issues.[3]

(1) Stop Orders. A ''stop'' order to buy shall be entered at a price above the current primary market offer. A ''stop'' order to sell shall only be entered at a price below the current primary market bid. Once entered, a ''stop'' order may not be executed until a trade (the ''effective trade'') occurs in the primary market that is at or through the price of the ''stop'' order. Once the effective trade occurs, the ''stop'' order shall be executed based upon the next primary market trade, but at a price no better than the effective trade (i.e., the ''stop'' order shall be executed on a next-no better basis).

(2) Stop Limit Orders.

(a) Buy Stop Limit Orders. A buy stop limit order shall only be entered at a price above the current primary market offer and shall become a limit order when a round-lot transaction takes place in the primary market at or above the stop price. The order shall then be filled in the manner prescribed for handling a limit order to buy.

(b) Sell Stop Limit Orders. A sell stop limit order shall only be entered at a price below the current primary market bid and shall become a limit order when a round-lot transaction takes place in the primary market at or below the stop price. The order shall then be filled in the manner prescribed for handling a limit order to sell.

(b) Nasdaq/NM Issues:

A ''stop'' or ''stop limit'' order to buy shall only be entered at a price above the then-current best offer disseminated pursuant to SEC Rule 11Ac1–1 (the ''National Best Offer''). A ''stop'' or ''stop limit'' order to sell shall only be entered at a price below the then-current best bid disseminated pursuant to SEC Rule 11Ac1–1 (the ''National Best Bid''). Once entered, a stop or stop limit order may not be executed until the price of the order is equal to (1) the National Best Offer in the case of a buy order or (2) the National Best Bid in the case of a sell order, at which time the member or member organization that accepted the order shall be obligated to use its best efforts to obtain the best available price to fill such order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The primary purpose of the proposed rule change is to add a provision to the Exchange's Rules relating to ''stop'' orders, thereby clarifying that the existing Rule 28 of Article XX relates solely to ''stopped'' orders.[4] Under the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Dual Trading Systems issues are issues traded on both the CHX and either the New York Stock Exchange or the American Stock Exchange.

[4] A ''stopped'' order is an order that is accepted by a member and guaranteed a fill at a specific price, usually the price at the time the order is

proposed Rule 28A, ''stop'' or ''stop limit'' orders for Dual Trading System issues will only be permitted to be entered at a price above (for buy orders) or below (for sell orders) the then-current offer or bid, respectively, in the primary market. Stop or stop limit orders for Nasdaq/NM Issues will only be permitted to be entered at a price above (for buy orders) or below (for sell orders) the then-current National Best Offer or National Best Bid, respectively.

As set forth in the proposed Rule 28A, a specialist's obligations with respect to incoming ''stop'' and ''stop limit'' orders are distinct from liabilities relating to ''stopped'' orders, which under Rule 28 are guaranteed execution at a specified price and size.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition

(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

received, unless the member can achieve price improvement for the customer. Telephone conversation between Paul O'Kelly, Executive Vice President, CHX, and Marc McKayle, Attorney, Division of Market Regulation, Commission on September 30, 1999. *Also see* CHX Rule 28 of Article XX.

[5] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–14 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26157 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41947; File No. SR–CHX–99–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

September 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 1999, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule. Specifically, the portion of the CHX fee schedule governing transaction fees would be amended to provide for application of a $.0025 per share transaction fee to all agency orders transacted by CHX floor brokers in NASDAQ/NMS Securities, up to a maximum of $100 per side. Additionally, the CHX fee schedule would be amended to increase the current earned credit available to floor brokers by a factor of three and to provide a new credit based on Consolidated Tape Association revenue generated by each floor broker.[3] The rule changes will be reflected in the October, 1999 invoices transmitted by the Exchange to its members. The text of the proposed rule change is available upon request from the Commission or the CHX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the CHX schedule of membership dues and fees in three ways to provide new transaction fees and enhanced credits for CHX floor brokers. First, the portion of the CHX fee schedule governing transaction fees is amended to provide

[3] The proposed language with regards to tape credits reads as follows: ''Tape Credits. Total monthly fees owed by a floor broker to the Exchange will also be reduced (but to no less than zero) by the application of a Tape Credit. 'Tape Credit' means 35% of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular floor broker. To the extent that CHX tape revenue is subject to a year end adjustment, Tape Credits may be adjusted accordingly.''

for application of a $.0025 per share transaction fee to all agency orders transacted by CHX floor brokers in NASDAQ/NMS Securities, up to a maximum of $100 per side. Second, the CHX fee schedule is amended to increase the current earned credit available to floor brokers by a factor of three. Finally, the schedule is modified to provide a new credit based on Consolidated Tape Association revenue generated by each floor broker. The proposed rule change is intended to stimulate growth on the Exchange, enhance the competitive capability of floor brokers and foster cooperation on the Exchange's trading floor by making a reasonable allocation of those CHX revenues generated by its floor brokers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4)[4] of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4 under the Act[6] because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–15 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[FR Doc. 99–26158 Filed 10–6–99; 8:45 am]

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[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formulation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41967; File No. SR–NASD–98–85]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 5 of the Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Nasdaq Application of the OptiMark System

September 30, 1999.

I. Introduction

On November 13, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish rules for a new facility called the Nasdaq Application of the OptiMark System (''Application''). The Application is an electronic trading system based on information processing technology provided by OptiMark Technologies, Inc., together with its wholly-owned subsidiary, OptiMark Services, Inc. (''OSI'').[3] On December 11, 1998, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 5, 1999.[4] The Commission received four comment letters in response to the proposal.[5] On July 16, 1999, the NASD filed Amendment No. 2 to the proposed rule change.[6] On September 13, 1999, the NASD filed Amendments Nos. 3 and 4 to the proposed rule change.[7] On September

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OptiMark Technologies, Inc. is a computer technology firm that has developed certain patented technology referred to as ''OptiMark™.'' The Application is one of several different trading services based on this technology that may be available for other markets in the future. The Commission previously approved one such service for operation on the Pacific Exchange, Inc. *See* Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997). While the OptiMark technology is virtually identical to that which was approved for the PCX Application, the proposed Nasdaq Application adapts and uses the OptiMark technology within the existing Nasdaq market structure.

[4] Securities Exchange Act Release No. 40835 (December 28, 1998), 64 FR 549 (January 5, 1999).

[5] Letter from Jerry Putnam, President, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated January 22, 1999 (''Archipelago Letter''); letter from Ari Burstein, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1999 (''ICI Letter''); letter from W. Dennis Ferguson, Chairman, Clearing Firms Committee, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC, dated July 22, 1999; letter from W. Dennis Ferguson, Chairman, Clearing Firms Committee, SIA, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), SEC, dated August 23, 1999.

[6] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated July 16, 1999 (''Amendment No. 2''). In Amendment No. 2, the NASD amended proposed NASD Rule 4993(b) to provide that a Cycle will include Nasdaq Quote Montage Profiles reflecting all bid and offer quotes as reflected in the Nasdaq Quote Montage immediately prior to the commencement of the Cycle that could potentially be traded through by a Profile.

[7] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated September 13, 1999 (''Amendment No. 3''). In Amendment No. 3, the NASD amended proposed NASD rules 4991 and 4992 to clarify that only a Clearing Broker, as that term is defined in NASD Rule 6100(f), can establish the trading limits for users, including NASD members, that are not self-clearing. In addition, Amendment No. 3 clarifies that the terms ''Designated Broker'' is broader than ''Clearing Broker'' and includes correspondent brokers. Consequently, every user must be sponsored in the Application by a Designated Broker that is a Clearing Broker and that establishes the trading limits for its users and accepts responsibility for their trades. Some users also may

24, 1999, the NASD withdrew Amendment No. 4 in its entirety and filed Amendment No. 5 to the proposed rule change.[8] In Amendment No. 5, the NASD established trading parameters for the initial operations of the Application while its risk management tools are being refined, and requested that the Commission approve the Application on a pilot basis for a six-month period. The trading parameters include (1) a limitation on trading to 250 of the most actively traded Nasdaq securities, (2) a limitation on cycle frequency to one every five minutes, (3) a suspension of trading in the Application for 15 minutes if its volume equals or exceeds 12.5% of the average Nasdaq volume in the 250 securities, and (4) a suspension of trading in the Application for the remainder of the trading day if its volume equals or exceeds 15% of the average Nasdaq volume in the 250 securities. This order approves the proposed rule change, as amended, until April 3, 2000.

II. Description of the Proposal

A. Summary of the Application and Purpose

Nasdaq proposes to establish rules for a new facility called the Nasdaq Application of the OptiMark System.[9] The Application is a computerized, screen-based trading service intended for use by both NASD members and non-members. For securities listed on The Nasdaq Stock Market,[10] the Application would enable its users anonymously to represent their trading interest across a full spectrum of prices and sizes by entering Profiles (*i.e.*, indications of trading interest) into the OptiMark System to be compared and matched with Profiles entered by other users.[11] At specified times during the trading day (no more than once every five minutes during the proposed pilot period), the Application would conduct certain calculations against such expressions of interest to identify specific orders capable of execution. All such orders will be immediately executed and reported, except those that involve the matching of any Nasdaq Quote Montage Profile, as discussed further below.

Nasdaq represents that integrating OptiMark's technology into Nasdaq will continue Nasdaq's effort to improve opportunities for investors to receive the best available prices in the marketplace and reduce trading costs. It states that the proposed Application would (1) match all trading interest on a level playing field, (2) provide an alternative method for institutional investors to transact with minimal market impact and to obtain price improvement, (3) benefit market makers by providing an additional option to manage inventory risk through fast and efficient executions, and (4) benefit issuers through enhanced liquidity and flexibility for their shareholders.

B. Description of the Operation of the Application

The NASD is establishing the Application as a facility of Nasdaq, and the NASD accordingly has represented that it will control the operation of, and be fully responsible for, the Application, including its regulation and oversight.[12] NASD members and their customers will trade on the Application in the manner described below.

Access to the Application

The Application is available to any NASD member that is a Clearing Broker, as that term is defined in NASD Rule 6100(f), that chooses to become a user and complies with all applicable rules. A user is a subscriber who has entered into an agreement with OSI to access the Application. In addition, both NASD members that are not Clearing Brokers and non-members may become users, provided they are authorized in advance by one or more Designated Brokers that are Clearing Brokers (''Designated Broker/Clearing Brokers'').[13] These non-self-clearing users can be authorized by one or more Designated Brokers in accordance with a Designated Broker Consent Agreement. The Designated Broker Consent Agreement, between the Designated Broker and OSI or OptiMark OTC Services, Inc., provides the Designated Broker's authorization for Profiles of a user to be routed, executed, and reported in the Designated Broker's name. These agreements include any applicable credit limits imposed by the Designated Broker/Clearing Broker. A user's credit limits, as they may be established from time to time by a Designated Broker/Clearing Broker, will be programmed into the OptiMark System.[14] The Designated Broker will be alerted as its potential exposure to the users it authorizes to participate in the Application, individually or in the aggregate, approaches the established credit limits (''Alarm Threshold'') or reaches the limit at which the Designated Broker will no longer permit a customer to submit Profiles ''Trading Limit''). A Designated Broker is responsible for all of its users' orders and resulting transactions.

The Application would allow NASD members to access the new trading facility through the Nasdaq Workstation and the Nasdaq network that connects those Workstations. Nasdaq will provide a user interface that permits NASD members that are subscribers to the Nasdaq Workstation Service and have signed appropriate User Agreements to transmit Profiles from their Workstations to the OptiMark Matching

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be sponsored by an additional Designated Broker that is a correspondence broker. As noted in the text, Amendment No. 4 was withdrawn entirely by Amendment No. 5.

[8] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division of SEC, dated September 24, 1999 (''Amendment No. 5''). In addition to withdrawing Amendment No. 4 in its entirety, Amendment No. 5 adds a new paragraph (e) to Rule 4991 to define the term ''Electronic Data Interchange'' (''EDI'') as a screen-based electronic communications facility that enables Designated Brokers to establish or modify trading or alert limits. Amendment No. 5 also adds a new Rule 4999 that establishes trading parameters for the initial operations of the Application. The parameters are described more fully in Section II.B *Trading Parameters for Initial Operations* below. Finally, as noted in the text, Amendment No. 5 requests that the Commission approve the Application on a pilot basis for a six-month period.

[9] *See* Proposed NASD Rule 4991(a).

[10] Although during the pilot period the Application would be limited to 250 of the most actively traded Nasdaq securities, Nasdaq anticipates that ultimately the Application would be available for all securities listed on Nasdaq, including securities listed on the Nasdaq SmallCap market. The Application would not be available for securities not listed on Nasdaq, such as those that may be quoted in the OTC Bulletin Board.

[11] For a description of a Profile, *see* Section II.B below.

[12] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated June 3, 1999 (''June 3 Letter'').

[13] The term ''Designated Broker'' is defined in proposed NASD Rule 4991(c) as ''an NASD member who has been designated by a User to execute, clear, and settle transactions resulting from the Application.'' Proposed Rule 4991(c) further provides that ''[p]articipation as a Designated Broker shall be conditioned upon the Designated Broker's membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Act,'' and that ''[o]nly Designated Brokers that are members of a registered clearing agency ('Designated Broker/Clearing Broker') are permitted to establish trading limits for Users.''

[14] In Amendment No. 5, the NASD added paragraph (e) to proposed rule 4991 to provide for an ''Electronic Data Interchange'' (''EDI''), which is defined as ''a screen-based electronic communications facility with an appropriate audit trail that enables Designated Brokers to establish or modify trading or alert limits for the purposes of Profile validation by (1) submitting such trading instructions on-line and (2) receiving notifications on-line when their instructions have been received and when they have been implemented.'' No more than 10 Eligible Securities can be traded in the Application until the EDI is implemented.

Module,[15] which will conduct Cycles [16] on a periodic basis.[17]

The Application also would allow access through other networks and access devices, as long as such access is properly authorized. Non-member users sponsored by NASD members (subject to the applicable agreements referenced above), as well as any NASD member, could access the Application through OptiMark-provided network(s), which may provide access through third parties.

Entry of Profiles and Incorporation of the Nasdaq Quote Montage

Users would access the Application by submitting customized expressions of trading interest called Profiles. Profiles reflect an investor's willingness to trade at a variety of prices and sizes, including the level of satisfaction, on a sliding scale, of trading at a given price and size. For example, an investor may be 100% satisfied to buy 100,000 shares of XYZ Company at a price up to $1.00 above the current market price, but only 50% satisfied to buy that number of shares at a price $1.50 above it, and not satisfied at all to pay more than $2.00 above it. The satisfaction levels are expressed as a number between zero and one for each coordinate on a price/size grid.

These user-defined Profiles, which are represented by graphical user interface software, are not disclosed to other users or market participants, including any Designated Broker through whom a user is authorized to submit Profiles and obtain executions. The Profiles are received and logged in by the OptiMark Matching Module. The Application is programmed to obtain the optimal outcome of matching buyers and sellers at the best prices possible.

In addition to Profiles submitted directly by Users, the Nasdaq Application will include certain system-generated Profiles known as the ''Nasdaq Quote Montage Profiles,'' which reflect the bid and offer quotes from Nasdaq Market Makers, electronic communications networks (''ECNs''), and UTP Exchange Plan Specialists as displayed in the Nasdaq Quote Montage at the time a matching Cycle begins. Immediately prior to commencement of a Cycle, the system will view the Nasdaq Quote Montage and create Nasdaq Quote Montage Profiles for each quote that could potentially be traded through by a Profile.[18] In this way, the expressions of interests of all users, as well as publicly displayed quotes that potentially could be matched with such expressions of interest, would be reflected in the Application.

When a user enters a Profile into the Application, either through the Nasdaq network or another network capable of sending Profiles to the Application, the user can choose to restrict the ability of that Profile to match with a Nasdaq Quote Montage Profile. If the user chooses to limit the ability of its Profile to match with a Nasdaq Quote Montage Profile, the user's Profile will contain an added condition that is expected to limit the user's chances of finding matches from the contra side of the market. As discussed below, the system's matching algorithm will not allow any matches at a price inferior to that of another coordinate with Standing. The NASD represents that because each coordinate from a Nasdaq Quote Montage Profile has Standing, it is afforded full price protection.[19]

Central Processing Cycles—OptiMark's Matching Algorithm

At one or more times throughout the trading day, all Profiles (including the Nasdaq Quote Montage Profiles) will be centrally processed by the OptiMark Matching Module operated by OSI to obtain the optimal matches among users. The maximum frequency with which these ''Cycles'' may take place will be every five minutes,[20] with no Cycle taking place prior to 9:45 a.m. EST or after 3:45 p.m. EST. The exact frequency of Cycles for any given Nasdaq security will be determined by Nasdaq, in consultation with OptiMark, based on the general characteristics of the security, the robustness of the associated Profile flow over a period, and the current level of interest expressed by users.

The OptiMark Matching Module employs a sophisticated computer algorithm that measures and ranks all relevant mutual satisfaction outcomes by matching individual coordinates from intersecting buy Profiles with those of sell Profiles for a particular stock. These intersecting Profiles are matched in accordance with the following eligibility restrictions and priority principles.

1. *Eligibility Restrictions*—At commencement of a Cycle, each individual coordinate with a non-zero satisfaction value from all buy and sell Profiles received by the OptiMark Matching Module in a given eligible security would be grouped into the Buy Profile Data Base or the Sell Profile Data Base, respectively. Each individual coordinate, no matter how small or large,[21] from either Profile Data Base would be eligible to be matched with one or more coordinates from the other Profile Data Base and would result in one or more orders,[22] provided that neither of two parameters are violated.

Under the first parameter, no buy and sell coordinates could be matched in violation of any applicable user instructions for the respective Profiles, including: (a) The maximum quantity associated with the Profile; or (b) any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular price or size range.

Under the second parameter, no buy and sell coordinates could be matched at a price inferior to that of another coordinate with Standing that is eligible for matching.[23]

2. *Priority Principles*—The methods for considering potential matches between buy and sell coordinates in the Profile Data Bases would vary, depending on whether both coordinates

[15] *See* proposed NASD Rule 4991(g).

[16] For a description of a Cycle, *see* Section II.B below.

[17] The primary site of the Application, which will house the computer software and hardware complex that conducts the central processing of Profiles, is located in the Nasdaq data center in Trumbull, Connecticut. Nasdaq will be the facilities manager for the OptiMark System with respect to the Nasdaq Application. Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated April 28, 1999.

[18] *See* Amendment No. 2, note 6 above.

[19] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated March 19, 1999 (''March 19 Letter'').

[20] The five-minute Cycle frequency is applicable for the six-month period of initial operations for which the Commission is approving the proposed rule change. Proposed Rule 4999(b).

[21] The minimum trading increment would be 100 shares.

[22] The proposal defines the term ''Order[s]'' to mean one or more order[s] generated from a Cycle at specific prices and sizes at which immediate execution may occur. To be capable of execution, orders in eligible securities must be in round lots equal to or greater than 1,000 shares, except for Orders resulting from processing the Nasdaq Quote Montage Profiles, which may be in any round lot size. Orders must be in price increments conforming to the requirements of Nasdaq trading system rules and system requirements applicable to all orders executed in Nasdaq. Such Orders shall include the following information: (1) The stock ticker symbol; (2) a designation as ''buy,'' ''sell long,'' ''sell short,'' or ''sell short exempt''; and (3) such other information as may be required by Nasdaq. *See* proposed NASD Rule 4991(h).

[23] A coordinate has Standing if: (a) It has a satisfaction value of 1, and (b) all coordinates having the same price and a smaller size, down to and including the minimum trading increment (100 shares), are included in the associated Profile at a satisfaction value of 1. Also, each coordinate from a Nasdaq Quote Montaged Profile would have Standing. Conversely, no coordinate' from a Profile containing any boundary conditions restricting the aggregate number of shares that may be bought or sold at a particular size range shall have Standing. For example, no coordinate from a Profile submitted by a User on an ''all-or-none'' basis would have Standing.

represent satisfaction values of 1 or less than 1. As a result, there are two separate stages of a Cycle, the Aggregation Stage and the Accumulation Stage, which are discussed below.

Aggregation Stage. The OptiMark Matching Module initially would process eligible buy and sell coordinates in the Profile Data Bases, each with the full satisfaction value of 1 only. At this stage of calculation (''Aggregation Stage''), smaller-sized coordinates may be aggregated to build sufficient size to be matched with larger-sized coordinates to generate Orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions:

(A) *Price aggressiveness.* A coordinate with a more aggressive price (*i.e,* a higher price for a buy coordinate and a lower price for a sell coordinate) would have priority over coordinates with less aggressive prices.

(B) *Standing.* Among the coordinates with the same price, a coordinate with Standing would have priority over all other coordinates without Standing.

(C) *Time of entry.* Among the coordinates with the same price and Standing, the time of the entry of the associated Profile would determine relative priority, with earlier submissions having priority. All Profiles submitted by users would be appropriately time-stamped with a unique serial number when received by the OptiMark Matching Module. Because each Nasdaq Quote Montage Profile would be generated from the most current quotation prevailing at the time of commencement of a Cycle, the effective time of entry of a Nasdaq Quote Montage Profile would be later than that of any other Profile submitted by a user.

D. *Size.* Among the coordinates with the same price, Standing and time of entry, priority would be determined by size, with larger sizes having higher priority.

Such sorting enables the system to construct a single buy coordinate list and a single sell coordinate list, where the top coordinate on each list has priority over the rest. Once the priority buy and sell coordinates are established, the system will select the coordinate with the earlier time of entry at the top of either list as the ''aggregation attractor'' and then will seek to aggregate one or more coordinates from the contra list (in strict order or priority on that list) against the aggregation attractor to match its size and price. The matches against the aggregation attractor must comply with all applicable eligibility restrictions. If the matches against the aggregation attractor are successful (*i.e.,* matches consistent with eligibility restrictions), the Cycle will result in the generation of Orders. The system will then go on to select the next aggregation attractor, and the process will continue. If the matches against the aggregation attractor are unsuccessful, the next aggregation attractor will be selected (skipping over the failed one), and the process will continue as before. The Aggregation Stage will terminate when no further aggregation are possible.[24]

Accumulation Stage. Upon completion of the Aggregation Stage, the OptiMark Matching Module would consider potential matches between eligible buy coordinates and sell coordinates in the Profile Data Bases where one or both parties have a satisfaction value of less than 1 but greater than 0. At this stage of calculation (''Accumulation Stage''), only those buy and sell coordinates with the same associated price and size would be matched to generate Orders in accordance with the following rules of priority, subject to the applicable eligibility restrictions:

(A) *Mutual satisfaction.* A potential match with a higher mutual satisfaction value (the product of the two satisfaction values) would take precedence over other potential matches with lower mutual satisfaction values.

(B) *Time of entry (based on the earlier Profile).* Among the potential matches with the same mutual satisfaction, the match with the earlier time of entry, as determined initially by the effective time of entry assigned to the earlier of the buy and sell Profiles involved (the ''earlier Profile''), would have priority over other potential matches.

(C) *Size.* Among the potential matches with the same mutual satisfaction and time of entry for the earlier Profile, priority would be given to the one with a larger size.

(D) *Time of entry (based on the later Profile).* Among the potential matches with the same mutual satisfaction, time of entry (for the earlier Profile), and size, the match with the earlier time of entry, as determined this time by the effective time of entry assigned to the later of the buy and sell Profiles involved (the ''later Profile''), would have priority over other potential matches.

(E) *Price assignment.* In regard to all remaining ties between potential matches, which would consist solely of the coordinates for a single pair of buy and sell Profiles from two users that may be matched with the same mutual satisfaction, time of entry and size, but at different prices, priority would be given to the match at a price more favorable to the use whose Profile has the earlier time of entry. For example, among the last potential matches remaining at the price of 10 and at 10⅛, if the sell Profile is the earlier Profile, then the match would take place at the price of 10⅛. Two or more Profiles that are entered into the system representing the same number of shares may result in executions at differing prices depending on the other information and conditions entered into the system.

Generation of Orders Resulting From OptiMark Cycles

Any Orders generated from a Cycle at specific prices and sizes that involve the matching of any two user-submitted Profiles, in whole or in part, will be immediately executed. The trade between the matched users will be transmitted automatically through Nasdaq's Automated Confirmation Transaction Service (''ACT'') for trade reporting and clearing purposes (discussed more fully below).

Orders generated from a Cycle at specific prices and sizes that involve the matching of any Nasdaq Quote Montage Profile, in whole or in part, will be immediately delivered to the relevant participant through Nasdaq's existing delivery and execution systems, which will be adapted for this purpose. Currently, this means Nasdaq's Small Order Execution System (''SOES'') and its SelectNet Service. To facilitate the delivery and execution of any Orders resulting from the Nasdaq Quote Montage Profiles, Nasdaq intends to employ these evolving trading systems in the form that they exist at the time the Application begins operations. Any Order transmitted through these means to the participant's quote will be executed, unless the quote has been executed or canceled, in whole or in part, prior to delivery from the Application. If the quotation against which the contra Profile was matched has been executed or canceled, in whole or in part, prior to delivery from the Application, the Orders generated by the Application that correspond to the executed or canceled quotation shall be canceled without imposing any liability against the displayed quotation. In the case of any Orders delivered from the Application to any UTP Plan Exchange Specialist, those executed by the Exchange shall considered executed and reported on such Exchange.[25]

[24] March 19 Letter, note 19 above.

[25] *See* proposed NASD Rule 4994(a), *Order Execution, Reporting, and Clearing.*

Clearance and Settlement

As indicated above, transactions that result from matches through the Application will be cleared using Nasdaq's post-execution service, ACT. Accordingly, final locked-in trades will be forwarded to the National Securities Clearing Corporation (''NSCC'') in the ordinary course, and will clear and settle regular way through NSCC as would any other Nasdaq transaction. All users will receive a report of any execution resulting from processing the Profiles submitted by them (including any execution resulting against a displayed quotation) as soon as possible after the execution takes place. Users that are not self-clearing will have the option of re-allocating for clearing purposes all or a portion of any execution to another broker by the end of the trading day. A Designated Broker generally will be notified promptly after the close of the trading day to the extent it has been allocated for clearing purposes any transaction resulting from a Profile submitted by a user sponsored by that Designated Broker.[26]

The Designated Broker that agreed to sponsor a user in the Application is fully responsible for the clearance and settlement of that user's trades. Nasdaq and the operator of the OptiMark Matching Module are not responsible for either the user or another Designated Broker failing to pay for or to deliver the securities traded through this facility. Further, the NASD, Nasdaq and any other subsidiary or affiliate, and the operator of the OptiMark Matching Module are not deemed parties to or participants in, as principal or as agent, any trade that may occur through the Application. In proposed NASD Rule 4998(a), the Association states that neither Nasdaq, the NASD, nor any affiliate, operator, licensor, or administrator of the OptiMark Matching Module may be held responsible for any damages arising from the use of the Application. In addition, proposed NASD Rule 4998(b) states that neither Nasdaq, the NASD, nor any affiliate, operator, licensor, or administrator of the Application makes any express or implied warranties with respect to any results that a user or Designated Broker using the Application may expect. Paragraph (b) of the proposed NASD Rule 4994 states that responsibility for clearance and settlement remains with the Designated Broker. The User Agreements that each party must sign prior to entering a Profile into the Application likewise make clear that the responsibility for clearance and settlement lies with the Designated Broker, and that the Designated Broker must evaluate the ability of users to settle trades when it authorizes a user to submit Profiles under its sponsorship.

Finally, trades executed through the Application will not be subject to NASD Rule 11890, regarding clearly erroneous trades. The Application will require parties entering Profiles to agree that, once matched, their Profiles cannot be deemed to be erroneously entered. Consequently, Nasdaq is amending Rule 11890 to make clear that the Rule cannot be used by any Application user as a means to break a trade resulting from an OptiMark match.

Trade Reporting, Short Sales, and Halts

As with other execution services provided by Nasdaq, a public trade report will be immediately disseminated by Nasdaq for any executions resulting from the Application. These trade reports will be reported on behalf of the sell side party to the trade. The report for any resulting transaction will not be distinguished on the public tape from any other trade reported through Nasdaq. SEC Transaction Fees (Section 31 Fees)[27] apply and will be charged against the seller(s).

With respect to the Nasdaq's short sale rule, Rule 3350, which applies to Nasdaq National Market securities, the OptiMark Matching Module will be programmed to capture the bid price direction at the commencement of every Cycle, as well as the short sale status of every Profile entered (*i.e.*, whether it is marked short, and whether or not it is exempt). It will exclude any Profile that could result in a match and execution of any transaction in a Nasdaq National Market security that would be prohibited by the short sale rule.

Nasdaq will suspend within the Application any activity in any security that is subject to a trading halt or suspension pursuant to Commission or rules, Nasdaq Market Emergency Rules, or if deemed necessary for the protection of investors or to preserve system capacity and integrity.

Recordkeeping, Surveillance, and Inspection

The NASD will maintain, or cause to be maintained, all of the records relating to the Application that are maintained for other facilities of Nasdaq, including a detailed audit trail of each transaction resulting from the Application.[28] OptiMark will maintain all records that are required by the Nasdaq to fulfill its regulatory responsibilities and will provide such records upon request to the Nasdaq or the Commission.[29] Information regarding all profiles submitted to the Application, whether executed or not, is subject to review by the Commission and NASD Regulation, and may be used for the purpose of ensuring that any activity conducted through the Application is consistent with the federal securities laws and NASD rules. Thus, although the Profiles entered into the facility may be anonymous with respect to other users and the operators of the system itself, regulatory authorities would have full access to all information entered.

NASD Regulation, Inc. (''NASDR'') has determined that a Profile should be considered an order with respect to the NASD's Order Audit Trail System, NASD Rules 6950–6957 (''OATS'').[30] When a customer or another member firm gives an order to a member firm that, in turn, is entered into the Application as a Profile, the member firm must comply with the requirements of OATS. A member firm would be required to record and report the receipt of the order, along with any subsequent routing, cancellation, and modification of the order. In addition, when the order is routed to the Application, the route would be required to be reported to OATS in the same manner as orders routed to any other Nasdaq execution facility.[31]

The operations of all components of the Application will be monitored on an ongoing basis under Nasdaq's inspection, surveillance, and compliance programs. All information regarding activity in the Application will be maintained and provided to the NASD on a regular and continuous basis for normal surveillance purposes. In addition, the NASD will monitor OptiMark personnel who perform services for the Application to make sure that their activity is consistent with the NASD's responsibilities as a self-regulatory organization.

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[26] In the comparison, clearance and settlement process, the specific identify of the counterparties to a particular trade will be temporarily masked until 4:30 p.m. of the trade day.

[27] 15 U.S.C. 78ee.

[28] As a facility of Nasdaq, the Nasdaq Application is subject to SEC review, examination and inspection like any of Nasdaq's other trading services, such as SelectNet or SOES.

[29] Letter from Eugene A. Lopez, Vice President, Trading and market Services, Nasdaq, to Robert L.D. Colby, Deputy Director, Division, SEC, dated may 24, 1999; June 3 Letter, note 12 above.

[30] Letters from Thomas R. Gira, Vice President, Market Regulation, NASDR, to Richard C. Strasser, Assistant Director, Division, SEC, dated July 8 and July 28, 1999.

[31] The OATS requirements also would apply when a member firm enters a proprietary non-market-making order into the Application for execution. The OATS requirements would not apply when a non-member user submits a Profile directly to the Application pursuant to a Designated Broker Consent Agreement. *Id.*

As a party that has agreed to participate in the operation of the Application as a facility of Nasdaq, OptiMark is required to assist the NASD in any way deemed necessary by the NASD in carrying out the NASD's regulatory responsibilities with respect to the Application. OptiMark personnel will perform administrative and computer services and will not be permitted to trade through the Application. In addition, OptiMark personnel will not be permitted to advise others with respect to trading any particular security or securities, other than to carry out such functions as may be prescribed by the NASD for OptiMark personnel who are members of a Nasdaq service desk team. OptiMark will take reasonable steps to ensure that no OptiMark employee who provides services to the Application is subject to a statutory disqualification, as defined in Section 3(a)(39) of the Act.[32] OptiMark also will establish adequate safeguards and procedures to facilitate the confidentiality of trading information of Application users. Finally, all of the operations of OptiMark that are related to the operation of the Application as a facility of Nasdaq, including those portions developed by OptiMark, are subject to Commission oversight, examination, and inspection.[33]

System Capacity and Integrity

The Application will be operated by Nasdaq, which will adhere closely to all of the principles applied by the Commission in reviewing automation at markets operated by the self-regulatory organizations.[34] Nasdaq has reviewed the proposed system and believes that it will provide sufficient capacity to handle the volume of data reasonably anticipated for the Application. Further, Nasdaq has reviewed the system's security measures that will be in place and carefully considered all aspects of the system to ensure that it has been designed to prevent unauthorized access to the Application. Because the primary site of the system will be operated from Nasdaq's own data processing facility, Nasdaq believes that it will be able to maintain the security of the operations and to monitor closely and maintain the reliability of the system and its software.[35]

Fees for the Application

The NASD will submit a fee filing pursuant to Section 19(b) of the Act[36] to address the execution charges that will be assessed. The NASD plans to assess a fee for every execution that occurs as a result of a match; OSI will not separately assess a fee.[37] A market participant whose quote in Nasdaq is accessed through the Application will not pay any fee.[38]

Trading Parameters for Initial Operations

In Amendment No. 5, the NASD added proposed NASD Rule 4999 to establish trading parameters for operation of the Application during the proposed pilot period.[39] Under proposed Rule 4999(a), the number of Eligible Securities is limited to a maximum of 250 issues specifically approved by Nasdaq. These securities were selected primarily on the basis of their historical volume and index trading activities and are among the top tier of Nasdaq's most actively-traded and well-capitalized issues. The proposal authorizes the NASD to amend the list of securities by filing a proposed rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act. In addition, only 10 of the initial 250 Eligible Securities may be traded through the Application until an appropriate EDI facility is implemented.[40]

Proposed Rule 4999(b) limits the maximum frequency of Cycles to one every five minutes, except that no Cycle may take place at any time during a trading day when Nasdaq has suspended all trading activities through the Application pursuant to proposed NASD Rule 4999(c). Under proposed NASD Rule 4999(c), all trading activities in the Application will be suspended immediately for the remainder of the trading day if the cumulative total daily volume of transactions resulting from all Cycles that are executed and reported through Nasdaq systems since the opening of regular trading hours on that day (''Application Volume'') equals or exceeds 15% of the ''Volume Trigger.'' The term ''Volume Trigger'' is defined in proposed NASD Rule 4999(d) as the share-volume equivalent (based on a weighted average dollar price) of the average daily aggregated dollar volume of all transactions, including those resulting from all Cycles, that are executed and reported through Nasdaq systems in the current approved list of 250 Eligible Securities for the preceding 30 consecutive trading days. In addition, if the Application Volume equals or exceeds 12.5% of the Volume Trigger, all trading through the Application will be suspended immediately thereafter for 15 minutes. Trading will resume upon expiration of the 15-minute halt and will continue until the regularly scheduled close of the Nasdaq Application; provided, however, that trading will be shut down for the day, as described above, if Application Volume equals or exceeds 15% of the Volume Trigger.

III. Comment Summary and NASD Response

The Commission received four letters in response to its request for comments on the proposed rule change.[41] The ICI Letter strongly supported approval, asserting that the Application would increase liquidity, reduce trading costs, and increase the efficiency of the Nasdaq market. The Archipelago Letter, however, expressed concern that the Application should not be approved unless it was properly integrated into the marketplace. In particular, the Archipelago Letter was concerned that (1) the proposal did not include a fee schedule, (2) the proposal did not require the Application to access customer limit orders priced below a market maker's or ECN's best quote and therefore could generate a substantial number of executions that traded through investor orders, and (3) the maximum frequency of Cycles (every 90 seconds) was too short a period given that the Application would be exempt from many requirements that govern the operation of continuous markets.

In its response to the Archipelago Letter,[42] Nasdaq stated that its practice was not to include fee schedules in system approval filings and that it planned to make a separate fee filing at a subsequent time. With respect to the possibility that customers' orders not equal to the best quote could be traded through, Nasdaq noted that such orders would not be publicly displayed and that no inter-linked market has a requirement that precludes a trade-through in such circumstances. Finally, Nasdaq noted that, during the proposed pilot period, Cycles would be limited to no more than one every five minutes.

The Clearing Firm Committee of the SIA (''Committee'') submitted two

[32] 15 U.S.C. 78c(a)(39).

[33] Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated April 28, 1999.

[34] *See* note 50 below.

[35] March 19 Letter, note 19 above.

[36] 15 U.S.C. 78s(b).

[37] March 19 Letter, note 19 above.

[38] Amendment No. 3, note 7 above.

[39] As discussed further below, the NASD is proposing trading parameters in response to comments raised by the public and the SEC staff.

[40] *See* note 14 above for a description of the EDI facility.

[41] *See* note 5 above.

[42] Amendment No. 3, note 7 above.

comment letters,[43] each of which expressed concern that the Application presented unique risks for clearing firms who acted as Designated Brokers and introduced significant risk into the clearance and settlement system. The Committee believed that these risks should be addressed before the Commission approved the proposed rule change. Specifically, the Committee was concerned that the Application did not provide clearing brokers with a sufficient capability to monitor the intra-day positions of the users that they sponsor in the Application because their trades would not be disclosed to the clearing brokers until the end of the trading day. The Committee noted that the counterparty, concentrated positions, and liquidity of an issue all were important factors to be considered in risk management. The Committee believed that real-time monitoring of positions was not as critical in the market for exchange-listed securities because the depth and liquidity of that market would allow a Clearing Broker to trade out of a position if necessary due to the failure of a correspondent or user. It asserted that, in the over-the-counter market, many issues were thinly traded and would leave the Clearing Brokers with an unacceptable level of risk.

The Committee also was concerned about the unwieldy methods for communicating changes in Trading Limits and Alarm Thresholds to the Application. The Committee contrasted the Application with the risk management tools currently provided to Clearing Brokers in ACT, which allows them to set credit limits for their correspondents, to monitor the trading of correspondents on an intra-day basis, and to block reporting to ACT when a correspondent reaches its trading limits. The Committee believed that automated risk management tools should be a prerequisite to approval of the Application. In particular, it asserted that the Application should provide enhancements that allowed Clearing Brokers to monitor risk effectively on an intra-day basis and that placed control of credit limits with the Clearing Brokers. If such enhancements were not provided, the Committee expressed concern that responsible firms would restrict access to the Application by establishing conservative credit limits, but that other Clearing Brokers with less sophisticated risk management systems might act less responsibly. These less responsible firms might be susceptible to failure, thereby causing a domino effect throughout the industry.[44]

The NASD responded to the Clearing Committee's concerns in two letters.[45] First, it emphasized that only Designated Brokers that are Clearing Brokers will be allowed to establish Trading Limits and Alarm Thresholds for non-self-clearing users of the Application. Second, the NASD noted that both users that are not members of the NASD and NASD members that are not self-clearing must be sponsored by a Designated Broker that is a Clearing Brokers before they can participate in the Application. Third, the NASD emphasized that the Trading Limits established by a Clearing Brokers establish a ''hard ceiling'' for user Profiles. The Application would reject any Profile that created a potential for a user's trading to exceed its Trading Limit. Finally, the NASD stated that it was committed to enhancing the Application in the future and that it had begun to examine changes to the Application that would more closely integrated ACT risk management with the Application. In the meantime, however, as discussed above, the NASD has proposed to limit the Application to 250 of the largest Nasdaq stocks, to cap the maximum daily volume that may be done through the Application, and to provide an electronic means for delivering and receiving confirmation of intra-day credit adjustments.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, particularly the requirements of Section 15A(b).[46] The NASD's proposal to establish rules to implement the Application is consistent with the requirements of Section 15A(b)(6) that the rules of an association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. In addition, NASD's proposal is consistent with the requirements of Section 15A(b)(6) that an association's rules be designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, and not be designed to permit unfair discrimination between customers, issuers, and broker-dealers.[47]

The Commission also finds that the proposed rule change is consistent with Section 11A of the Act.[48] The Commission believes that the proposed Application would further the purposes of Section 11A and the development of a national market system by promoting economically efficient execution of securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer.

The Commission previously approved a proposed rule change by the Pacific Exchange, Inc. (''PCX''), to establish the PCX Application of the OptiMark System, which permits trading through the OptiMark system of equity securities listed or traded on the PCX.[49] Approval of the Nasdaq Application of the OptiMark System will extend to investors the opportunity to take advantage of the OptiMark trading program for securities quoted on Nasdaq. The Application provides a new and potentially more efficient way to match and execute trading interest in securities. The Application could be particularly useful in meeting the demands of sophisticated portfolio managers and other market professional implementing complex trading strategies. These market participants often desire to minimize the market effect of their transactions through expression of varied trading interests on a confidential basis. The Application will give these investors a means for carrying out their investment strategies, often without the participation of a dealer. At the same time, the Application will allow retail customers, through member users, to interact with institutional trading interests. As discussed above, retail trading interest may enter the Application through a broker-dealer directly or through the Nasdaq Quote Montage Profiles.

The Commission believes that the Application, as a facility of Nasdaq, is designed to operate in a manner that is consistent with the regulatory purposes

[43] *See* note 5 above.

[44] The Committee also believed that the NASD's reliance on the legal agreements required of users and Designated Brokers who participate in the Application represented an attempt to conduct improper rulemaking.

[45] Letter from Richard Ketchum, President, NASD, and Phillip J. Riese, CEO, OptiMark Technologies, Inc., to Jonathan G. Katz, Secretary, Commission, dated September 3, 1999; letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated July 26, 1999.

[46] 15 U.S.C. 78*o*–3(b).

[47] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78k–1.

[49] Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997).

of the Act. The NASD will control the operation of the Application and will be fully responsible for all activity that takes place through the Application, including its regulation and oversight. As part of its obligations under the Act and pursuant to its own rules, the NASD will conduct all necessary surveillance of the operation of and trading through the Application. The NASD also has represented that the Application will have a full audit trail capability, adequate computer capacity to handle and process user Profiles and order flow, and adequate computer security and procedures to ensure the safety and confidentiality of user transmissions.[50] Finally, OptiMark, as a party that has agreed to operate portions of a facility of a self-regulatory organization, is required to cooperate with the NASD in meeting its regulatory responsibilities and will be subject to Commission oversight and examination.

Access to OptiMark will be limited to NASD members that are Clearing Brokers, as well as non-self-clearing NASD members and non-members who will have access to the Application only through a Designated Broker/Clearing Broker.[51] With respect to these users, before submitting Profiles to the Application, the Designated Broker/Clearing Broker will be required to authorize their access to the Application and accept responsibility for their transactions. The Designated Broker Agreement will impose credit limits on the user's trading through the Application, and these credit limits will be programmed into the OptiMark Matching Module. The Designated Broker will be alerted as its potential exposure to its customers, individually or in the aggregate, approaches the established credit limits. The Application will not allow any user to enter a Profile that could result in a transaction that exceeded the user's credit limit. This ''hard ceiling'' on a user's trading means that a Designated Broker/Clearing Broker will always know the maximum amount of exposure that it could have in the Application.

The Application does not at this point provide a clearing broker with the opportunity to monitor its intra-day exposure to its users or permit a Clearing Broker to input its Trading Limits and Alarm Thresholds directly into the Application. The Application therefore does not provide some of the risk management tools that currently are available to Clearing Brokers through ACT for trading in Nasdaq securities. The Commission believes, however, that the Application provides reasonable risk management tools for its initial operations during the six-month pilot period. These tools include the hard ceiling on a user's trading, the addition of an EDI for communication of Trading Limits and Alarm Thresholds, and the trading parameters that will restrict the scope of the initial operations of the Application. The limitation of Eligible Securities to 250 of the most actively-traded securities on Nasdaq provides greater assurance that the depth and liquidity of the market should help to ensure that a Clearing Broker may trade out of a position quickly if necessary. The limitation on frequency of Cycles to one every five minutes will provide a Clearing Broker with a greater opportunity to modify its credit limits in response to notices that a user is approaching its credit limit. The addition of the EDI will enhance the ability of clearing brokers to modify credit limits quickly and accurately. Finally, the absolute limitation on trading volume in the Application to 15% of total Nasdaq volume in the 250 Eligible Securities helps to ensure that the Application will not become a primary facility of the Nasdaq market while the Application's risk management tools are being refined during the six-month pilot period.[52] The NASD has agreed to work on these enhancements and to submit them to the Commission before the six-month pilot period expires.

Although it is approving the Application for a six-month pilot period, the Commission stresses the need for Clearing Brokers to recognize the different nature of the risk management tools provided by the Application and those provided by ACT for trading through other Nasdaq facilities. It is of paramount importance that Clearing Brokers set appropriate user credit limits *in advance* of trading through the Application. Unlike in ACT, where Clearing Brokers have an opportunity to monitor their intra-day exposure to correspondents and to refuse to accept responsibility for certain large trades after they have been executed,[53] in the Application, Clearing Brokers must set credit limits based on a recognition that they will not have this opportunity to decline a transaction. To help monitor the credit limits set by clearing brokers in the Application, Nasdaq will provide reports, upon request, to the Commission and NSCC showing each participating Clearing Broker's total allocated trading limits for its customer base.

The Commission believes that the NASD is adopting reasonable requirements for the clearance and settlement of transactions resulting from the Application. All such transactions will be reported through ACT, forwarded to NSCC in the ordinary course, and clear and settle regular way as would any other Nasdaq transaction. The Commission also believes that the proposal is designed in a manner that will allow the NASD to meet its obligations with respect to the recordkeeping and reporting of transactions resulting from the Application. As with other execution services provided by Nasdaq, a public trade report will be immediately disseminated by Nasdaq for any executions resulting from a Cycle in the Application. The report for such transactions will not be distinguished on the public tape from any other trade reported through Nasdaq. Although such transaction reports may occur in rapid sequence, the individual transaction reports will still be displayed in the order of execution of the transactions.

In addition, all transactions resulting from the Application will comply with the applicable SEC and NASD rules, including the NASD's short sale rule, Rule 3550.

In sum, the Commission historically has encouraged markets to integrate new data communications and trade execution mechanisms into their markets in furtherance of the development of the national market system. The Application is likely to promote competition among market centers because it has the potential to attract new market participants and to increase order flow to Nasdaq. By

[50] As with any other facility of a self-regulatory organization, the Commission expects to conduct a full EDP review of the Application and its operations. *See e.g.*, the Commission's Automation Review Policy guidelines, Securities Exchange Act Release No. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991).

[51] NASD members will be required to maintain information and records concerning non-member access for which they are responsible. The NASD has represented to the Commission that it would require its members to make such non-member user information available to the NASD upon request, so that the NASD can fulfill its duties regarding surveillance. Telephone conversation between Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, and Daniel M. Gray, Special Counsel, Division, SEC, on June 29, 1999.

[52] The SIA Clearing Committee expressed the view that the NASD's reliance on contractual requirements included in the User and Designated Broker Agreements was not appropriate because such agreements had not been subject to public comment. The Commission disagrees and notes that the relevant provisions of these agreements were described in the notice of the proposed rule change that was published for public comment.

[53] The ACT risk management functions are set forth in NASD Rule 6150.

attracting order flow, the Application may provide a new and enhanced source of liquidity for investors. Finally, existing market interest on Nasdaq will be adequately integrated into the Application through the Nasdaq Quote Montage Profiles, which will create the opportunity for trading interest expressed through user Profiles to interact with publicly displayed quotes.

The Commission finds that good cause exists to approve Amendment Nos. 2, 3, and 5 to the proposed rule change prior to the 30th day after the date of publication of filing thereof in the **Federal Register.** Amendment No. 2 expands the range of publicly displayed bid and offer quotes that will be included in a Cycle as Nasdaq Quote Montage Profiles and that will thereby interact with user Profiles. As the NASD notes, this change will make the Application more consistent with the PCX Application of the OptiMark System that previously was approved by the Commission. Amendment No. 3 merely clarifies that all users must be either self-clearing or sponsored by a Designated Broker that is a Clearing Broker, and that only Designated Brokers that are Clearing Brokers can establish the trading limits for users. Finally, Amendment No. 5 provides for an EDI to enhance the ability of Designated Brokers to modify Trading Limits or Alarm Thresholds, and establishes several trading parameters for the initial operations of the Application during the six-month pilot period; these trading parameters limit the scope of the Application during the pilot. The Commission therefore finds good cause to accelerate approval of Amendment Nos. 2, 3, and 5.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2, 3, and 5, including whether they are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–85 and should be submitted by October 28, 1999.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[54] that the proposed rule change (SR–NASD–98–85) is approved on a pilot basis until April 3, 2000.[55]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[56]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26154 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41946; File No. SR–NASD–99–5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Web CRD Policies

September 29, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 24, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation'' or ''NASDR''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASDR has designated this proposal as new constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)[3] of the Act, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to clarify Forms U–4 and U–5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, for the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify Forms U–4 and U–5. Members file Forms U–4 and U–5 electronically pursuant to NASD Rule 1140, with one exception. New member applicants file their initial Forms BD and U–4 on paper under NASD Rule 1013. Because the majority of the filings will be done electronically, NASDR has determined that mailing address for the Central Registration Depository (''CRD'') should be removed from the cover pages of Forms U–4 and U–5 to help eliminate any potential confusion among members about how to submit the Forms. NASDR has issued numerous communications to members about Web CRD and electronic filing requirements, and anticipates that members and new member applicants will comply with the rules and stated policies. NASDR will be submitting a separate rule filing further clarifying Rule 1013 and how new member applicants will be given access to Web CRD so that all amendments to their initial Forms BD and U–4 will be submitted electronically in compliance with Commission requirements.[4]

2. Statutory Basis

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the

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[54] 15 U.S.C. 78s(b)(2).

[55] Approval of the pilot should not be interpreted as indicating that the Commission is predisposed to approving the proposal permanently.

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 41594 (July 2, 1999), 64 FR 37586 (July 12, 1999).

[5] 15 U.S.C. 78*o*–3(b)(6).

Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change clarifies certain practices with respect to Web CRD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDR does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meeting, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A)(i) [6] of the Act and subparagraph (f)(1) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–50 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26160 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41970; File No. SR–PCX–99–24]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendments 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Relating to Automated Opening Rotations

September 30, 1999.

I. Introduction

On July 13, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a new Automated Opening Rotation (''AOR'') system for handling customer orders and executing option transactions during the opening rotation. On August 4, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, appeared in the **Federal Register** on August 30, 1999.[4] The Commission received no comments regarding the proposal. On September 1, 1999, the PCX filed Amendment No. 2 to the proposal.[5] Notice of Amendment No. 2 appeared in the **Federal Register** on September 10, 1999.[6] On September 27, 1999, the Exchange filed Amendment No. 3.[7] This Order approves the proposed AOR pilot until October 1, 2000, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 3 and is simultaneously approving the Amendment No. 3.

II. Description of Proposal

The Exchange is proposing to adopt a new procedure that will allow the Order Book Official (''OBO'') to establish electronically, for eligible options series, a single price opening for executing eligible market and marketable limit orders in the POETS system. The PCX proposes to implement the new procedure on a one-year pilot basis until October 1, 2000.[8] In the event of an imbalance, any remaining orders in the system that are eligible to be executed will be assigned to market makers participating on the Auto-Ex System. The new process involves three basic steps: first, the markets are established; second, the opening rotation is automatically processed for the majority of series; and finally, any series with manual orders or complication is opened manually, *i.e.*, pursuant to the current procedures for opening rotations.[9]

More specifically, under the new AOR process, opening rotations on the PCX will occur in the following manner: Prior to the opening the OBO will determine whether there are any orders in the trading crowd to be executed at the opening.[10] Once the underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation (''Division''), Commission, dated August 3, 1999 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 41774 (August 20, 1999), 64 FR 47210.

[5] *See* Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, Commission, dated September 1, 1999 (''Amendment No. 2'').

[6] *See* Securities Exchange Act Release No. 41824 (September 1, 1999), 64 FR 49263 (noticing additions to the proposed rule change and granting partial accelerated approval for the implementation of AOR for 16 issues on a thirty day pilot basis). The Commission notes that the PCX has represented that the Exchange has not experienced any problems with AOR on the 16 pilot issues. Telephone conversation between from Michael D. Pierson, Director, Regulatory Policy, PCX, and Terri Evans, Attorney, Division, Commission, on September 30, 1999.

[7] In Amendment No. 3, the Exchange proposes to implement the AOR system for all issues on a one-year pilot basis. *See* Letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Richard C. Strasser, Associate Director, Division, Commission, dated September 24, 1999 (''Amendment No. 3'').

[8] *Id.*

[9] *See* Securities Exchange Act Release No. 41774, *supra* note 4.

[10] These may include, for example, orders that cannot be represented in POETS, such as contingency orders, broker/dealer orders, orders designated ''not held,'' orders for spreads or straddlers, combination orders, all-or-none orders, as well as any order the floor broker determines to represent manually.

security has opened and the Auto-Quote values are established,[11] the OBO will request from the trading crowd bids and offers in the specific option issue. The trading crowd may determine that the posted bids and offers are accurate, or alternatively, may request by public outcry that certain quotes be modified.

Once the bid and asking price in each series has been ascertained, the OBO and AOR System will identify all series that are eligible for the AOR and that can be opened immediately, and will also identify all series that are not eligible for the AOR. Those that are not eligible for the AOR must be opened manually. Procedures for automatic and manual opening are discussed below.

A. Automatic Opening

To prepare for an automated opening the AOR will first exclude series for which there are no market or marketable limit orders in the system, as well as all series deemed ineligible for AOR. The series eligible for AOR will be promptly opened in accordance with the following principles and procedures: First, the system will determine a single price at which the series will be opened.[12] Second, orders in the system will maintain priority over market maker bids and offers, so orders in the system will be matched up with on another,if possible, before executing against the accounts of market makers. Third, if there is an imbalance in the number of contracts to buy or sell at the opening, then the imbalance will be ''cleaned up'' by the market makers who are participating on the Auto-Ex system, *i.e.,* the system will assign a set number of contracts to each participating market maker until the imbalance has been exhausted. Under the proposal, the imbalance will be allocated to the members of the trading crowd using the Exchange's existing Auto-Ex system.

Under the proposal, orders may participate in the AOR regardless of size. An order will not be prohibited from participating in the automated opening rotation on the ground that the order is ineligible from being executed over the Auto-Ex System due to its size.

The proposed rule change also provides for the manual accommodation of certain non-bookable orders represented in the trading crowd and disclosed to the OBO prior to an AOR. Generally, if the order is either a market order or a limit order with a limit price equal to the opening price of the particular series, then that order will be entitled to an execution immediately following the opening of that series. If the order is a market order or limit order for a public customer, the order will be filled in its entire size by the market makers in the trading crowd. If the order is a limit order for a broker-dealer, the order will be entitled to be filled up to a number of contracts equal to a pro rata share of the number of contracts that the Auto-Ex system assigns to the market makers. If a broker is holding more than one order to trade at the same limit price, then that broker is limited to no more than one pro rata share of the number of contracts that the Auto-Ex System assigns to the market makers.

B. Manual Opening

The Exchange intends to use the AOR in all issues traded on the PCX. The Exchange also expects that particular series will only be designated for manual opening (*i.e.,* ''de-selected'' from the automated procedure) in unusual circumstances. The Exchange does not anticipate any situations where all series of a given issue will be opened manually when the AOR is operational. The Exchange also does not anticipate that any particular series will be de-selected and opened manually on a routine or regular basis.

As noted above, all series that are not eligible for AOR will have been identified before any series are opened automatically. The OBO can designate a series as ineligible for the AOR by deliberately not entering a quote into the system for that series. Series not eligible for the AOR include series for which: (a) There are orders requiring special handling; [13] (b) there is an imbalance of contracts exceeding an established threshold; or (c) the trading crowd and OBO determine that the series should be opened manually.

1. Manual Orders Requiring Special Handling

A series will be deemed ineligible for AOR if a broker in the crowd is holding an order [14] that is likely to be executed during the opening. In general, manual orders to buy at relatively low prices or to sell at relatively high prices generally will not likely participate in the opening.

2. Imbalance of Contracts Exceeding Established Thresholds

The Exchange will establish, for each option issue, a number of contracts that constitutes an imbalance threshold. Initially, each option issue will have a minimum imbalance threshold of 20 contracts. However, a Lead Market Maker in an issue may increase the imbalance threshold in that issue to a number greater than 20, but not exceeding 999 contracts (due to system constrains). The decision to change the imbalance threshold will be made as follows. Prior to the opening the OBO, in conjunction with the Lead Market Maker in the issue, will set for each option issue a number of contracts that constitute an imbalance threshold. This number will attempt to reflect the relative liquidity in the trading crowd and size of the following crowd.[15] The AOR will calculate imbalances on a series-by-series basis and flag those series for which the imbalance threshold has been exceeded.

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[11] Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX and Terri Evans, Attorney, Division Commission on September 21, 1999.

[12] The appropriate price that is used in a single price opening is determined in the following manner: Once the bid and offering prices in a particular series have been determined, the OBO will identify the number of contracts available to sell at the bid price and the number of contracts available to buy at the offering price. If the number available to sell at the bid price is greater than the number available to buy at the offering price, then the opening price will be the bid price, and vice versa. If the number of contracts to sell is equal to the number to buy, then the opening price will be established halfway between the bid and offering price. However, if there is no trading increment available at the halfway point between the bid and offering prices (*e.g.,* as in the case of a market 2 bid, 2 1/16, asked), then the opening price will be established at the price closest to the last sale price of option contracts of that series.

If market and marketable limit orders can be completely satisfied by trading against other orders in the Book, then the market may open between the established bid and ask prices, with no market maker participation. For example, if the market is 22 1/4, with an order in the Book to sell 20 contracts at 2 1/8, and a market order to buy 5 contracts, the single price opening will occur with 5 contracts trading at 2 1/8 (public customer to public customer). The market quote at the opening will then be 22 1/8.

[13] The following types of orders are ineligible to participate in the automated opening rotation: (1) Broker/dealer orders; (2) contingency orders; (3) spreads; (4) straddles; (5) not held orders; and (6) combination orders. These types of orders are defined in PCX Rule 6.62. If any of these types of orders are being represented in the trading crowd and are likely to participate in the opening based on price, a manual opening rotation will be held in that series. Market orders are plain limit orders (*i.e.,* limit orders with no contingencies) are eligible to participate in the AOR.

[14] The Exchange clarified that brokers hold orders as agent. Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and Kenneth Rosen, Attorney, Division, Commission, on September 14, 1999.

[15] The Options Floor Trading Committee will monitor and supervise the general process of designating imbalance thresholds on the trading floor. The Exchange believes that it is necessary to provide a reasonable amount of flexibility in the process of establishing particular thresholds. The Exchange also believes that there is little risk of abuse in providing flexibility because if low thresholds are established, then the series will have to be opened manually. Although the Exchange does not anticipate that there will be any problems in this area, the Exchange will study the process during the first six months of use of the new system. If a rule change appear necessary, the Exchange will file a rule filing with the Commission to effect the changes necessary.

3. Crowd's Request for Manual Opening

A member or members of a trading crowd may request a particular series to be opened manually, and the OBO will honor reasonable requests. These requests may typically be made in a series with a large amount of open interest or for other reasons.[16] Although the Exchange does not anticipate problems resulting from such requests, in the event of a dispute the matter would be resolved by floor officials.

C. Obligations and Eligibility of Market Makers

Market makers may participate in the AOR if they are otherwise eligible to participate on the Auto-Ex system during the trading day pursuant to PCX Rule 6.87. Generally, to participate on Auto-Ex, a market maker must be present in the trading crowd and that trading crowd must be included within that market maker's appointment zone. If there is adequate participation in a particular option issue, two floor officials may require market makers who are members of the trading crowd, as defined in subsection (6) of PCX Rule 6.87, to log on to Auto-Ex, while present in the trading crowd, absent reasonable justification or excuse for non-participation. The Exchange proposes that these rules will apply to market maker participation in the AOR with respect to contracts allocated to market makers during the opening rotation process.

D. Surveillance of Market Maker Procedures

The market makers participating on AOR will be required to price the contracts fairly, in a manner consistent with their obligations under PCX Rule 6.37. In conjunction with the implementation of the AOR system, the Exchange will publish a regulatory bulletin to remind market makers of their obligation to set Auto-Quote fairly. The Exchange believes that a number of factors, including scrutiny by customers and firms representing customer orders, will ensure that market makers adjust the Auto-Quote values consistent with their obligation. Moreover, market makers are required to vocalize their changes to Auto-Quote, which allows OBO's to oversee the markets and alerts market makers who may want to improve the markets. In addition, if an OBO notices any unusual activity in the setting of Auto-Quote values the OBO must fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's Auto-Quote has an audit trail log that details every quote change resulting from the use of Auto-Quote. This audit trail report can be studied in the event of any concerns with the way the Auto-Quote values were established for AOR.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act. In particular, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act.[17] Section 6(b)(5) requires, among other things, that the rules of the exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change represents an effort to facilitate the execution of orders at the opening by providing an electronic means of establishing a single price opening. The Exchange believes that this will expedite the opening of option issues on the Exchange, which will serve all market participants. Further, the Exchange believes it will eliminate problems associated with later openings, including the elimination of blacklogs of unexecuted orders that can result when opening rotations are conducted entirely manually and thus, improve market efficiency for all market participants. In addition, the Commission believes that the proposal should promote fair participation in openings by all market participants by providing for the participation of non-market-maker broker-dealer orders in the opening process.

The Commission recognizes that certain aspects of AOR may require heightened scrutiny by PCX to ensure that market makers are not permitted to use the flexibility they have to set an opening price to the disadvantage of investors and other market participants. The Exchange has assured the Commission that it will ensure that market-makers exercise their discretion in a manner consistent with their obligation to price options fairly. The Commission expects that the PCX will develop objective, quantifiable standards for ensuring that the market-makers are satisfying those obligations and to surveil for such compliance. The pilot offers an opportunity for the Commission to evaluate the Exchange's efforts at surveilling market-maker activities associated with AOR. Prior to permanent approval, the Commission expects to review the results of the applied surveillance program. The Exchange has also stated that it intends to monitor the process by which imbalance thresholds are established.[18] The Commission expects to review the results of the Exchange's surveillance of the establishment of the imbalance thresholds.

Although AOR is likely to greatly improve the opening on PCX, the Commission believes that the system can and should be improved to permit participation by non-bookable orders. The Commission does not view the manual handling of non-bookable orders as the optimal solution for ensuring that those orders are fairly incorporated into the opening. It would be preferable for such orders to be electronically incorporated into an AOR opening. Prior to permanent approval, the Commission expects the Exchange to develop a workable plan for incorporation non-bookable orders on AOR.

The Commission finds good cause for approving the proposal, as amended, prior to the thirtieth day after the date of publication of notice of filing of the proposed rule change in the **Federal Register**. The Commission finds that the proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system by expediting the opening of option issues on the Exchange.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The amendment merely proposes to implement AOR on a pilot basis.[19] By implementing AOR on a pilot basis, the Exchange can immediately address difficulties associated with lengthy opening rotations and study AOR under market conditions while giving the Commission an opportunity to view the operation of

[16] Generally, a series will not be eligible for an AOR if one or more members of the trading crowd has reasonably requested a manual opening rotation in that series. The Exchange anticipates that such requests will fall into two general categories. The first category involves mergers and takeovers. The second category would cover system problems or system limitations. For example, the POETS system may be unable to generate an accurate market because it is unable to take into account the fact that a takeover will occur on the following day, and as such, the system is unable to factor in the correct model. In these situations, the series will be opened manually.

[17] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See supra* note 15.

[19] *See* Amendment No. 3, *supra* note 7.

AOR under market conditions before approving it permanently.

The Commission expects the PCX to study issues related to the Commission's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of AOR. In addition to issues discussed above, among the issues that the Exchange should explore are: The effect of AOR on the quality of customer executions, any effects on existing order execution priority, and the handling of non-bookable orders.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–24 and should be submitted by October 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–PCX–99–24), as amended, is approved on a pilot basis until October 1, 2000, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26156 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41921; File No. SR–PCX–99–21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Definition of Local Securities

September 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to revise its current definition of ''Local Security'' as defined in PCX Rule 4.1(m). The text of the proposed rule follows. New text is in italics; deletions are in brackets.

¶ 3697 Definitions and Trading Hours

Rule 4.1 (a)–(1) No Change.

(m) ''Local Security'' [shall] means a security admitted to dealings on the Exchange which is not also admitted to dealings on [either the New York or American Stock Exchanges] any other national securities exchange or national association as those entities are defined or recognized under the terms of the Securities Exchange Act of 1934.

(n) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The exchange proposes to revise its current definition of ''Local Security'' as defined in PCX Rule 4.1(m). Currently, PCX Rule 4.1(m) defines ''Local Security'' as ''security admitted to dealings on the Exchange which is not also admitted to dealings on either the New York Stock Exchange (''NYSE'') or the American Stock Exchange (''AMEX'').''

The Exchange proposes to revise Rule 4.1(m) to narrow the definition of local security to include only securities admitted to dealings on the Exchange that are not also admitted to dealings on any other national securities exchange or national securities association. Specifically, under the proposed rule change, ''local security'' is defined as ''a security admitted to dealings on the Exchange which is not also admitted to dealings on any other national securities exchange or national securities association as those entities are defined or recognized under the terms of the Securities Exchange Act of 1934.'' The Exchange believes this rule change more accurately reflects the intended definition of local security as a security traded exclusively on the PCX. Thus, the new definition excludes securities currently within the local securities definition that are actually traded in marketplaces other than the PCX, NYSE or AMEX.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[3] of the Act, in general, and furthers the objectives of Section 6(b)(5)[4] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and a national market system and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The exchange did not solicit or receive written comments on the proposed rule change.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6(b)(5) of the Act[5] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[6]

Pursuant to Section 19(b)(2) of the Act,[7] the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the **Federal Register** in that accelerated approval will enable the Exchange to clarify its intended definition of a local security as a security traded exclusively on the PCX, and will ensure that members and customers rely on an accurate definition of the term. The Commission believes that the proposed rule change more accurately reflects today's markets and the intended definition of the term.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–21 and should be submitted by October 28, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change (SR–PCX–99–21) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26161 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b)(5).

[6] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41939; File No. SR–Phlx–99–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Deletion of Obsolete Procedural Provisions within Phlx Rules 500, 501, 508, and 523 Applicable to the Allocation, Evaluation and Securities Committee

September 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 1999, as amended on September 21, 1999,[3] the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend obsolete procedural provisions applicable to the Allocation, Evaluation and Securities Committee (''Allocation Committee'') and other committees. Specifically, the Exchange proposes to modify certain provisions governing when the Allocation Committee is required to consult with the Floor Procedure Committee (regarding equities specialist units), the Options Committee (regarding options specialist units) and the Foreign Currency Options Committee (regarding currency options specialist units). The Exchange also proposes to modify the notice requirement relating to the transfer of equity books or options classes among specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx represents that the purpose of the proposed rule change is to update Exchange Rules 500, 501, 508, and 523 to reflect the time intensity associated with the specialist appointment, transfer, and reallocation process. In particular, the proposed amendments are intended to eradicate obsolete procedural provisions to reflect actual practice, and to eliminate the Committee's frequent need to invoke the exemptive provision found in Exchange Rule 525.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard Rudolph, Counsel, Phlx, to Joshua Kans, Special Counsel, Division of Market Regulation (''Division''), Commission, dated September 20, 1999. Although the Exchange originally filed the proposal on July 15, 1999, the Phlx failed to provide the SEC with a 5-day written notice of its intent to file the proposal, and the July 15th proposal did not indicate that the proposed rule change would not become operative for 30 days after the date of the filing or for such shorter time as the Commission may designate. Both requirements must be satisfied before a ''non-controversial'' rule can become immediately effective under 17 CFR 240.19b–4(f)(6).

[4] Phlx Rule 525 provides that the Allocation Committee shall have the authority to grant any exemption from any provision in Phlx Rules 500 through 599 (governing, among other things, allocations, reallocations and transfers of options classes and equity books) where necessary due to

Continued

The rules governing the Allocation Committee were adopted in 1982 as a pilot program [5] and were subsequently approved on a permanent basis on June 26, 1991.[6] Before then, the Floor Procedure Committee, and the Options Committee allocated and reallocated equity, and options books, respectively. Because the Allocation Committee was a new concept when it was formed, the Exchange deemed it necessary that the Allocation Committee consult with the respective floor committees.

Due to time constraints in the transfer and reallocation of equity and options books to specialist units, the Phlx now believes that it is often impractical for the Allocation Committee to consult with the respective floor committees. The Allocation Committee finds it necessary to meet often, with short notice, to expedite the transfer or reallocation of various equity issues and options to allow the new specialist units promptly to commence trading the transferred or reallocated security. The rules governing new specialist unit appointments, transfers and reallocations contain procedural guidelines that are time-consuming and cumbersome given the realities of today's securities markets.

The proposed rule change would amend Phlx Rule 501(a) and (c) to eliminate the requirement that the Allocation Committee consult with the respective floor committees prior to appointing a specialist unit or requiring a specialist unit to obtain additional staff. The proposed rule change would also amend Phlx Rule 501(d) to eliminate the requirement that a specialist unit report certain staffing or capital changes to the respective floor committees, while continuing to require that specialist units report such changes to the Allocation Committee.

The proposed rule change would also amend Phlx Rule 508, governing reallocations, in several ways. Although the proposed rule change would continue to require that proposed agreements among specialists to reallocate equities books or options cases be identified to the Allocation Committee prior to the proposed transfer, it eliminates the provision requiring 12 days advance notice. The proposed rule change would also eliminate the requirement that such agreements be provided in advance to the floor committees governing equities and foreign currency options. Because the Options Committee has requested that it be consulted prior to any such transfer, Rule 508 would retain the requirement that agreements to reallocate options classes be provided in advance to the Options Committee (although the 12 day advance notice requirement is also eliminated in this instance, as well).[7]

The Committee intends to seek input from the various other committees as warranted. Thus, the proposal would add a new paragraph ''(b)'' added to Phlx Rule 500 to allow the Committee to consult with the various committees on certain issues as warranted, consistent with the exchange by-laws.[8]

Finally, the Exchange proposes to amend Phlx Rule 523 to eliminate the requirement that the Allocation Committee consult with the Floor Procedures Committee with respect to the Allocation Committee's ability to reallocate equity securities not traded on the Philadelphia Stock Exchange Automated Communication and Execution (''PACE'') system.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act [9] in general, and further the objectives of Section 6(b)(5) [10] in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest. In particular, the proposed rule change is consistent with section 6(b)(5) because it provides for the expeditious continuity of trading in securities that are allocated to specialist units or reallocated or transferred from on specialist unit to another.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) Does not become operative for 30 days from September 21, 1999, the date that the filing was amended, and because the July 15, 1999 proposal satisfied the requirement that the Exchange give the Commission five business days written notice of the Exchange's intent to file the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

extraordinary circumstances, or impose any condition on any applicant or registrant that the Allocation Committee deems necessary or appropriate in

[5] *See* Securities Exchange Act Release No. 18975 (August 17, 1982), 47 FR 37019 (August 24, 1982) (SR–Phlx–81–1). On February 23, 1988, the pilot program was extended indefinitely until further action was taken by the Commission. *See* Securities Exchange Act Release No. 25388 (February 23, 1988), 53 FR 6725 (March 2, 1988) (SR–Phlx 87–42).

[6] *See* Securities Exchange Act Release No. 29369 (June 26, 1991), 56 FR 30604 (July 3, 1991) (SR–Phlx–87–42).

[7] Commentary .01 to Phlx Rule 508 will continue to provide that a physical options book may not be transferred to a different location until 45 calendar days after the Options Committee disseminates its approval (although the Options Committee may shorten that time). Consistent with this commentary, the Options Committee needs to be consulted prior to any transfer of options classes among or between specialists on the Phlx options floor so that the Options Committee may ensure that different options classes are physically located in a manner that would not impose an unreasonable burden on the Phlx floor options traders who may participate in multiple trading crowds. Telephone conversation between Richard Rudolph, Counsel, Phlx, and Hong-anh Tran, Attorney, and Joshua Kans, Special Counsel, Division, Commission, dated September 27, 1999.

[8] Article X, Section 10–7(d) of the Exchange by-laws requires the Committee to consult with the various other committees as necessary to perform its functions.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 240.19b–4(f)(6) (1999).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C.552, will be available for inspection and copying in the Commission's Public Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–16 and should be submitted by October 28, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26159 Filed 10–6–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203, Amdt. 5]

State of Minnesota

In accordance with correspondence received from the Federal Emergency Management Agency, effective September 22, 1999, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to October 25, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 29, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26163 Filed 10–6–99; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Allocation of the Refined Cane Sugar and Sugar Containing Products Tariff-Rate Quotas for 1999–2000

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation of 27,954 metric tons of refined sugar to Mexico and allocation of 10,300 metric tons of refined sugar and 59,250 metric tons of sugar containing products to Canada and globalization of the remaining refined sugar tariff-rate quota (which includes speciality sugars) for the period that begins October 1, 1999 and ends September 30, 2000.

EFFECTIVE DATE: October 1, 1999.

ADDRESSES: Inquiries may be mailed or delivered to Karen Ackerman, Senior Economist, Office of Agricultural Affairs (Room 423), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Karen Ackerman, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of refined sugar and sugar containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 1999–September 30, 2000, has been established by the Secretary of Agriculture at 60,000 metric tons, raw value (66,139 short tons). A total of 7,090 metric tons (7,815 short tons) of this tariff-rate quota will be available for refined sugar and 14,656 metric tons (16,155 short tons) will be available for specialty sugars on a globalized basis, that is, these amounts will be available on a first-come, first-serve basis. A total of 10,300 metric tons (11,354 short tons) of refined sugar and 59,250 metric tons (65,312 short tons) of sugar containing products (of the tariff-rate quota maintained under additional U.S. Note 8 to Chapter 17 of the Harmonized Tariff Schedule) will be allocated to Canada. Separately, an additional 2,954 metric tons (3,256 short tons) of refined sugar will be allocated to Mexico. The remaining 25,000 metric tons (27,558 short tons) of refined sugar tariff-rate quota is being allocated to Mexico to fulfill obligations pursuant to the North American Free Trade Agreement (NAFTA).

Under the NAFTA, the United States is to provide total access for raw and refined sugar from Mexico of 25,000 metric tons, raw value, for this quota period in conjunction with Mexico's net surplus producer status. Once the raw sugar tariff-rate quota has been established, this allocation is subject to the condition that the total imports of raw and refined sugar from Mexico, combined, is not to exceed 25,000 metric tons raw value. The allocation of the refined sugar and sugar containing products tariff-rate quotas to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–26110 Filed 10–6–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 25–17A, Transport Airplane Cabin Interiors Crashworthiness Handbook

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 25–17A and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to an advisory circular (AC) which provides methods acceptable to the Administrator for showing compliance with the type certification requirements of Title 14, Code of Federal Regulations (14 CFR) part 25, pertaining to the cabin safety and crashworthiness of transport category airplanes. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC revision.

DATES: Comments must be received on or before February 4, 2000.

ADDRESS: Send all comments on the proposed AC revision to: Federal Aviation Administration, Attention: Terry Rees, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Domonique Adams, Transport Standards Staff, at the address above, telephone (425) 227–2111.

SUPPLEMENTARY INFORMATION:

[14] 17 CFR 200.30–3(a)(12).

Comments Invited

A copy of the draft AC revision may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT:** Interested persons are invited to comment on the proposed AC revision by submitting such written data, views, or arguments as they may desire. Commenters should identify AC 25–17A, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC revision. The proposed AC can be found and downloaded from the Internet at http://www.faa/gov/avr/air/airhome.htm, at the link titled ''Draft Advisory Circulars.'' A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT**.

Discussion

Advisory Circular 25–17 contains guidance pertinent to the cabin safety and crashworthiness type certification requirements of part 25 as amended through Amendment 25–59. This proposed revision essentially updates AC 25–17 by compiling additional pertinent guidance associated with amendments through Amendment 25–70. As is the case with AC 25–17, the proposed AC 25–17A continues to be organized numerically by basic part 25 crashworthiness requirements, then by a chronological reference of amendments that affect each requirement, and finally by any guidance associated with each of those amendments. In order to correctly utilize either AC 25–17 or the proposed revision, the applicability of a particular crashworthiness requirement, amendment, or associated guidance to an airplane must first be established by determining the airplane's certification basis as defined in its Type Certificate Data Sheet (TCDS).

Some advisory and guidance information applicable to transport airplane cabin safety and crashworthiness has been formally published in single-topic ACs. Advisory circulars have not been developed for all topics related to cabin safety and crashworthiness, however. In many instances, the introduction of new technology or features, or the occurrence of incidents or accidents has prompted a fresh interpretation of existing regulations or the introduction of new regulations. Issue papers and special conditions have in some cases documented the means of compliance found to be satisfactory to the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretations of the intent of specific regulations. Responses to those requests have been documented in the form of issue papers, and policy memorandums distributed to all ACOs, letters to applicants and foreign airworthiness authorities. Generally, all these types of information have not been organized or cataloged in a manner that facilitates ready access, and consequently, it is sometimes difficult to identify the guidance that may exist on any given topic. This proposed AC revision compiles existing policy up to the previously identified part 25 amendment into one document, so that all interested parties have more current and easier access to this information. The methods and procedures described in this AC, as proposed to be revised, have evolved over many years, and represent certification practices pertinent to the associated requirements, at the indicated amendment levels.

Issued in Renton, Washington, on September 21, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–26171 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of a Current Public Collection of Information

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 11 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before December 6, 1999.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following is a short synopsis of the currently approved public information collection activity, which will be submitted to OMB for review and renewal:

1. 2120–0010, Repair Station Certification, 14 CFR Part 145. The information collected on FAA Form 8310–3, Application for Repair Station Certificate and/or Rating, is required from applicants who wish repair station certification. 14 CFR Part 145 prescribes the requirements for issuing repair station certificates and associated ratings to maintenance and alteration facilities the collection of this information is necessary for the issuance, renewal, or amendment of applicant's repair station certificates, and ensuring that repair stations meet minimum acceptable standards. There are an estimated 1100 applications annually for an estimated annual burden of 305,000 hours.

2. 2120–0026, Domestic and International Flight Plans. The information collected on FAA Form 7233–1 Domestic Flight Plan, is used to control aircraft operating under instrument flight rules and to provide search and rescue information in the event of an accident or incident. The information is used by air traffic controllers and search and rescue personnel. The information collected on FAA Form 7233–4, International Flight Plan, is used for the same purposes as domestic flight plans and is used by foreign controllers as well as domestic. Statistics are not kept on the total number of flight plans filed into the national airspace system (NAS). The estimated burden associated with this collection during the last submission was 2.5 minutes per response, times 6,327,833 responses, equaling 263,660 hours annually. The burden associated with this submission has not been calculated.

3. 2120–0039, Air Carriers/Commercial Operators 14 CFR Part 135. The respondents in the last submission three years ago was an estimated 1,700 air carriers and commercial operators. The estimated total annual burden in the last submission was 1,000,000 hours

annually. Each operator who seeks to obtain, or is in possession of an air carrier or FAA operating certificate must comply with the requirements of 14 CFR Part 135 in order to maintain data which is used to determine if the air carrier or commercial operator is operating in accordance with minimum safety standards.

4. 2120–0043, Recording of Aircraft Conveyances and Security Documents. Approval is needed for security conveyances, such as mortgages, submitted by the public for recording against aircraft, engines, propellers, and spare parts locations. There is an estimated 56,000 hours on an estimated 56,000 respondents.

5. 2120–0049, Agricultural Aircraft Operations, 14 CFR part 137. Standards have been established for the operation of agricultural aircraft and for the dispensing of chemicals, pesticides, and toxic substances. Information collected shows applicant compliance and eligibility for certification by FAA. 14 CFR Part 137 prescribes requirements for issuing agricultural aircraft operator certificates and for appropriate operating rules. We estimate 4000 respondents with an estimated annual burden of 14,000 hours.

6. 2120–0543, Pilots Convicted of Alcohol or Drug Related Motor Vehicle Offenses or Subject to State Motor Vehicle Administrative Procedures. The requested information (1) is needed to mitigate potential hazards presented by airmen using alcohol or drugs in flight, (2) is used to identify persons possibly unsuited for pilot certification, and (3) affects those pilot who have been convicted of a drug-or alcohol related traffic violation. The respondents are an estimated 2,200 pilots who have been or will be convicted of a drug or alcohol-related traffic violation. The estimated annual burden is 375 hours .

7. 2120–0545, Race and National Origin Identification. The collection of data is necessary for examination of employee selection procedures, enhancement of recruitment programs and providing equal employment opportunity to all candidates. The respondents are an estimated 50,000 individuals taking the FAA air traffic control specialist examination. The estimated total annual burden is 1,700 hours.

8. *2120–0552, Suspected Unapproved Part Notification, FAA Form 8120–11, Suspected Unapproved Parts Notification.* The information collected on the FAA Form 8120–11 will be reported by manufacturers, repair station operations, owner/operators, or the general public who wish to report suspected unapproved parts to the FAA. The notification information is collected, correlated, and used to determine if an unapproved part investigation is in fact warranted. It is estimated that there will be 400 respondents annually for an estimated burden of 60 hours.

9. 2120–0554, Employment Standards—Parts 107 and 108 of the Federal Aviation Regulations. Section 105 of Public Law 101–604, the Aviation Security Improvement Act of 1990, directed the FAA to prescribe standards for the hiring, continued employment and contracting of air carrier and appropriate airport security personnel. These standards were developed and have become part of 14 CFR parts 107 and 108. Airport operators will maintain at their principal business office at least one copy of evidence of compliance with training requirement for all employees having unescorted access privileges to security areas. Air carrier ground security coordinators are required to maintain at least one copy of the annual evaluation of their security-related functions. This is a recordkeeping burden and the affected public is estimated at 1,300 airport operators and air carrier checkpoints. The estimated annual recorkeeping burden is 16,300 hours.

10. 2120–0571, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities. This regulation required specified aviation employers to implement an FAA-approved Alcohol Misuse Prevention program (AMPP) to provide the FAA with an AMPP certification statement, and to report annually on alcohol testing results. The respondents are an estimated 5,500 specified aviation employers for an estimated burden of 32,000 hours annually.

11. 2120–0606, Fleet and Operations Reporting: Grand Canyon National Park. The information is needed to (a) establish accurate information on overflights of Grand Canyon National Park for noise and safety management purposes; (b) validate noise models for use in mitigation studies; (c) determine when and where noise mitigation is required and (d) provide the basis for a flexible and adaptable noise management system.

Issued in Washington, DC, on October 1, 1999.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 99–26169 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Record of Decision for the Adoption of the Colorado Airspace Initiative Prepared by the Air National Guard

AGENCY: Federal Aviation Administration.

ACTION: Record of decision.

SUMMARY: The Federal Aviation Administration (FAA), after carefully reviewing the Final Environmental Impact Statement (FEIS) prepared by the Air National Guard (ANG), announces its decision to adopt the ANG FEIS and implement the requested Special Use Airspace changes to the National Airspace System in and around the state of Colorado. This airspace initiative is known as the Colorado Airspace Initiative (CAI).

FOR FURTHER INFORMATION CONTACT: Elizabeth Graffin, Environmental Specialist, Environmental Programs Division (ATA–300), Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–3075.

SUPPLEMENTARY INFORMATION: As provided in 40 CFR 1506.3 and FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' the FEIS of another Federal Agency may be adopted in accordance with the procedures in 40 CFR 1506.3. Under 40 CFR 1506.3(b), if the actions covered by an EIS and the actions proposed by another Federal agency are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. The FAA has determined that the proposed action of modifying existing and establishing new military training airspace areas over the State of Colorado is substantially the same as the actions considered in the ANG's FEIS. FAA staff has independently reviewed the ANG FEIS and has determined that it is current and that the FAA NEPA procedures have been satisfied. FAA has determined that the FEIS adequately assesses and discloses the potential environmental impacts of the proposed action. FAA staff concluded that, after mitigation measures are taken into consideration, the existing airspace can be modified and new military training airspace can be established with no significant impacts on environmental resources.

The ANG has requested this action to respond to changers in readiness training requirements. The requirements

are reflected in specific United States Air Force regulations for military aircraft and personnel operating in the affected airspace. Additionally, this action responds to the changes in commercial aircraft arrival and departure corridors required for operation of the Denver International Airport.

The Text of the entire Record of Decision is provided as follows:

I. Introduction

This document serves as the Record of Decision (ROD) for the Federal Aviation Administration's adoption of the Air National Guard's (AGN) Final Environmental Impact Statement (FEIS) and ROD for the proposal known as the ''Colorado Air Initiative'' (CAI).

Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) regulations implementing NEPA procedures (40 CFR Section 1500–1508), the ANG prepared and published a FEIS that analyzed the potential environmental impacts associated with modification of existing airspace and the establishment of new military training airspace in and around the state of Colorado. The document also considered changes in airspace utilization by military flying units.

The FEIS considered three alternatives, the ''Preferred Alternative'', the ''Original Proposal'' and the ''No Action Alternative'' as required by the CEQ regulations. Five other alternatives has been identified but were eliminated from further consideration.

The ANG has submitted the FEIS along with the supporting aeronautical proposals to the FAA for consideration and adoption pursuant to CEQ regulation 40 CFR Part 1506.3. The proposal submitted by the ANG to the FAA for consideration is the alternative designated by the ANG as the Preferred Alternative. This alternative is also the environmentally preferred alternative. The Preferred Alternative proposes the modification of three existing Military Operating Areas (MOA) and four Military Training Routes (MTR), the deletion of one MTR and a portion of one other, as well as the establishment of one MOA and three MTRs. One MOA would remain unchanged.

The following is a discussion of the proposal submitted to the FAA, a brief discussion of the other alternatives considered, environmental impacts and additional mitigation measures mandated by the FAA as well as the decision of the FAA.

II. Background

The ANG prepared the CAI FEIS in support of its request for modification to the National Airspace System administered by the FAA. The ANG requested these modifications to address new military airspace training requirements in part related to the modernization of their aircraft and weapons systems. The ANG is also seeking these modifications in response to changes in commercial aircraft arrival and departure corridors dictated by the FAA for the operations of the Denver International Airport.

The ANG issued the CAI FEIS in August 1997 and executed its ROD in October 1997. In the spring of 1998, the ANG submitted these documents to the FAA for adoption pursuant to CEQ guidelines. Thereafter, the ANG submitted its aeronautical proposals to the FAA, formally requesting that the FAA make the requisite changes to the National Airspace System.

The FAA held six informal airspace meetings. In response to many of the comments received as well as to incorporate safety and efficiency requirements, the FAA mandated the additional mitigation measures that are outlined in this document.

III. Proposal

The ANG FEIS analyzed three alternatives, the Preferred Alternative, the Original Proposal, and the No Action Alternative. Implementation of either the Preferred Alternative or the Original proposal would result in a reduction in the number of operations compared to the No Action Alternative (existing conditions). Five other alternatives were originally identified but were not carried forth for consideration. The ANG in its ROD dated October 28, 1997, selected the Preferred Alternative. This alternative was also the environmentally preferred alternative. The following is a discussion of the alternatives considered.

Preferred Alternative

The Preferred Alternative was developed in response to issues and concerns raised during the ANG scoping process. This Alternative took into account comments made by the CAI Working Group and recommendations from former Governor Romer's Office.

The Preferred Alternative proposes the modification of three existing MOAs and four MTRs, the deletion of one MTR and a portion of one other. It also proposes the establishment of one MOA and three MTRs. One MOA would remain unchanged. The proposal considered in the FEIS is as follows:

- Modify Kit Carson A/B MOAs and rename them Cheyenne High and Low MOAs. Minimum altitude would be raised from 100 feet to 300 feet Above Ground Level (AGL).
- Modify Pinon Canyon MOA. The eastern border would be moved approximately 1 nautical mile (NM) to provide FAA clearance criteria for a north-south airway.
- Utilize La Veta MOA. This MOA would remain unchanged.
- Modify Fremont MOA and rename Airburst MOA. The southeastern corner would be extended east and south to connect with the La Veta MOA. The modified airspace would be renamed Airburst A, B and C would form contiguous airspace with the La Veta MOA and the Airburst range. This would exclude an area over Canon City, Colorado and Penrose, Colorado. The bottom elevation of Airburst B and C would be 500 feet AGL.
- Establish Two Buttes MOA. This MOA would be established east of the adjoining Pinon Canyon MOA. The MOA would be divided into low and high areas. The elevation for low would be 300 AGL to 10,000 mean Sea Level (MSL). The elevation for high would be 10,000 MSL but not higher than Flight Level (FL) 180.
- Modify IR–409. The bottom elevation of this MOA would be raised from surface to 300 feet AGL for the two final segments and raised from surface to 500 feet AGL for the remainder of the route. The route width would be reduced from 16 NM to 10 NM along two segments, from 22 NM to 8 NM along one segment and from 16 NM to 6NM for the remainder.
- Delete VR–412.
- Modify VR 413. The floor would be raised from surface to 500 feet AGL. The route width would be reduced to 6 NM. The southwestern most turning point would be 12 NM along the centerline to eliminate flights over the Great Sands Dune Natonal Monument. Restrictions would be added to the route so that aircraft would remain 2000 feet AGL to the maximum extend possible when they cross the Sangre de Cristo wilderness areas between Highways 50 and 285.
- Modify IR–414. The minimum altitude would be raised from the surface to 300 feet AGL. The width would be reduced from 28 NM to 6 NM. An existing maneuver area would also be eliminated.
- Establish XIR–424. Create a new MTR that would follow the reverse ground path of IR–414 and then follow the existing ground path of IR–409 to the Airburst Range. The bottom altitude of XIR–424 would be 500 feet AGL from Cottonwood to Airburst Range.
- Modify IR–415. This IR would be modified so that it would join IR–409 at Cedarwood and continue to the Airburst Range. The minimum altitude for this route would be raised from the surface to 300 AGL beginning at Point E near Cedarwood and raised from the surface to 500 feet AGL from Point E to Airburst Range. The width would be reduced from 21 NM to 10 NM and from 33 NM to 10 NM.
- Modify IR–416. The southern portion of this route from Point G to Point L would be deleted. The altitude for the remaining route

would be raised from the surface to 300 feet AGL.

- Establish XIR–426. This new MTR would follow the reverse ground path of the current IR–416 from Point L to Point G. The minimum altitude of this route would be 300 feet AGL.
- Establish XVR–427. This visual route would begin approximately 7 NM south of the northern border of Cheyenne MOA. The route would proceed southwest then north and terminate at Airburst Range. The new VR would conform to the existing IR–409 route widths and altitudes beginning at Point F. The minimum altitudes prior to Point F would be 300 feet AGL.

Original Proposal

This Alternative had been identified by the ANG during its scoping process and was retained for further consideration within the FEIS. Under this Alternative, four existing MOAs and MTRs would be modified, one MTR and a portion of another would be deleted, and one new MOA and three new MTRs would be established. After considering public input received during the scoping process, the ANG determined that the Preferred Alternative was more responsive to the public while ensuring that their training requirements could be accomplished.

No-Action Alternative

Under the No-Action Alternative, existing airspace would continue to be utilized. No modifications to training airspace configuration would occur. However, the operations at the Denver International Airport, since its opening, have placed limitations on the ANG's use of existing airspace. In addition, new modern warfare training requirements mandated by the Air Force necessitated modification to the existing airspace. The ANG determined that the existing airspace would not enable its pilots to accomplish their training requirements in a manner that would adequately prepare them for wartime taskings. Therefore, this alternative was not considered a viable alternative.

Alternatives Identified But Not Carried Forward For Further Detailed Study

Five other alternatives were originally identified by the ANG but were eliminated from further detailed study. They are as follows: (1) Continued use of the existing MOAs and MTRs aside from those addressed previously and the creation of one MOA and five MTRs. The new MOAs and MTRs were eliminated because they did not meet criteria established for meeting aircrew proficiency requirements or were dismissed by the FAA. (2) Establishment of 6 new MOAs. Each MOA was eliminated from further consideration because it did not meet training or distance from home station requirements. (3) The elimination of the 140th Wing of the COANG. The ANG eliminated this alternative because its evaluations demonstrated economic and logistical advantages associated with individual state ANG units including the 140th Wing. (4) Elimination of military training airspace in the state of Colorado. This alternative would have impaired the ability of pilots stationed in Colorado from accomplishing the required level of training. (5) Replacement of all military aircraft training with simulator assisted training. Although simulator training does assist aircrews in obtaining certain type of training it does not provide the opportunity to obtain the most important aspect of aircrew proficiency training, which is the requirement to conduct actual military training flights.

Modification to the Initial Proposal Submitted to the FAA

In addition to the proposals considered in the FEIS and considered as part of the Preferred Alternative, the ANG ROD detailed minor modifications of five MTRs. These modifications had been requested by the FAA stemming from the FAA's on going aeronautical review. They are as follows:

- IR–409. Corridor width narrowed along several legs.
- IR–414. Corridor width narrowed under Cheyenne MOA.
- XIR–424. Corridor width narrowed under Cheyenne MOA.
- IR–416. Corridor width narrowed under Cougar MOA. Southern half of the route would not be eliminated.
- XIR–426. Proposal withdrawn (adoption of the no action alternative)

IV. Environmental Consequences

The ANG, in its FEIS, considered the potential environmental impacts associated with all three of the alternatives carried forth for analysis. The analysis for each piece of airspace was conducted as if the maximum possible numbers of sorties were to be performed in that airspace. The ANG FEIS considered the potential environmental consequences on the following: Noise, Airspace Management/Air Traffic, Land Uses and Resources, Safety. Visual Resources and Aesthetics, Biological Resources (Vegetation, Wildlife and Domestic Animals and Threatened and Endangered Species), Cultural Resources, Air Quality, Socioeconomic Resources, Earth Resources, Water Resources, Hazardous Material Release, Human Health Effects and Natural Quiet. The EIS also considered the cumulative impacts of the proposal.

The ANG ROD concluded the following:

Based on the analyses conducted for the EIS, neither the Preferred Alternative, the Original Proposal, nor the No-Action Alternative result in significant environmental impacts. Any impacts which may occur can be minimized through the use of mitigation measures.'' (ANG ROD pg. 8)

V. Mitigation

After the publication of the ANG ROD, the FAA held six informal airspace meetings. From the input received from the public, as well as to assist the FAA in disseminating real time information relating to military training flights to the General Aviation population, the FAA determined that additional mitigation measures were necessary. In addition to the mitigation measures the ANG set forth in its ROD, the FAA mandated the following modifications:

- No operations to occur between the hours of 10:00 P.M. and 7:00 A.M.
- In addition to renaming the Kit Carson A/B, Cheynne, the western boundary would be relocated 10 NM to the east.
- Reduction of Pinon Canyon MOA. The eastern boundary would be modified to coincide with the eastern edge of VR–109 and the western boundary of Two Buttes MOA.
- Airburst A modified. The eastern, southern and western boundaries would be the same as the existing Fremont MOA. The southern boundary would be moved north to avoid Canon City and the Fremont Airport. Altitude would remain the same, i.e., 1500 feet AGL but not higher than FL 180.
- Airburst B modified. The southern boundary of the existing Freemont MOA would be moved east along the southern boundary of the Fort Carson R–2601. The altitude would be 500 feet AGL but no higher than FL 180.
- Airburst C MOA modified. The southern boundary would be extended south of the Airburst B MOA to highway 50, then west along highway 50 to a point south of Airburst B MOA then north to the southwest corner of the Airburst B MOA. The altitude would be 500 feet AGL, but not higher than 8,500 feet MSL.
- IR–409 modified. Point E would be deleted as an alternative entry/exit point. The existing segment between Point H and Point I would become VR–410/411.
- Creation of VR–410 and VR–411. These MTRs were created in lieu of the expansion of the Airburst MOA extending from R–2601 to the La Veta MOA. VR–410 and VR–411 would be 6 NM wide and would utilize the same centerline as the existing VR–409. VR–410 would be the northbound route and VR–411 the southbound route. The Special Operating Procedures (SOP) for both routes would require that all operations conducted south of U.S. Highway 50 occur at or above 8,500 feet MSL.
- VR–413 narrowed in the vicinity of the town of Moffat. Route restrictions and

reporting requirements added to the route SOP.

- La Veta MOA modified. The northwest tip of this MOA would be removed to accommodate Global Position System (GPS) approach procedures and airspace to the Fremont County Airport.
- Elimination of the Cougar MOA.

The environmental analysis contained within the FEIS was reviewed by the FAA and a determination made that any potential environmental impacts associated with the modifications made to the airspace proposals would be consistent with those already disclosed in the FEIS.

VI. Public Involvement Process

Informal Aeronautical Meetings

In response to public interest in this proposal, the FAA held six informal aeronautical public meetings in 1998. Meetings were held in Saguache, Westcliffe, Penrose, Englewood, Colorado Springs and La Junta, Colorado.

421 comments were received during these informal meetings and many more were submitted in writing after the meetings. The comments were read and characterized. The major issues identified by the public during this process and responses thereto were compiled in a document entitled ''Summary of Major Environmental Comments During FAA Aeronautical Review.'' This summary was mailed along with the FAA's **Federal Register** Notice dated April 27, 1999 declaring the Agency's intent to adopt the ANG FEIS to those individuals who had expressed concern about the initiative or who had attended an aeronautical meeting.

Informal Public Comment Period

In a **Federal Register** Notice dated April 27, 1999, (FR Vol. 64, pg. 22670) the FAA announced that it was recirculating the ANG FEIS in compliance with CEQ regulation 40 CFR Part 1506.3, and that it intended to adopt the FEIS. The **Federal Register** Notice stated that FAA would receive public comments for 30 days or until May 28, 1999. By letter dated May 3, 1999, the FAA notified interested members of the public of its intent to adopt the ANG FEIS. Also included in the mailing was a copy of the summary of major environmental concerns discussed above.

The public comment period was extended an additional 30 days to provide the public the opportunity to submit their comment on the references made by the FAA to the ANG aeronautical proposal. (FR dated May 20, 1999, Vol. 64, pg. 27612) In a letter dated May 19, 1999, the FAA mailed a summary of those refinements to the public and extended the period during which the FAA would receive public comments until June 21, 1999.

At the request of members of the public, the period during which the FAA would accept comment was extended one final time. By **Federal Register** Notice dated June 11, 1999, the FAA extended the informal public comment period to August 2, 1999. (FR Vol 64, pp. 31676–31677)

In excess of 400 comment letters were received by the FAA in response to the **Federal Register** Notices announcing its intent to adopt the ANG's FEIS. The letters were carefully read and considered. Major areas of concern were identified and a general response was sent to concerned citizens by letter dated August 11, 1999. All letters have become part of the administrative record and have been considered by the federal decision-maker.

Summary of Issues of Concern to the Public

Informal aeronautical meetings were held by the FAA to obtain aeronautical comments related to the proposed modification to the National Airspace System. However, the vast majority of comments made by the public during the FAA's six informal meetings were related to concerns about the potential for environmental impacts and the sufficiency of the environmental analysis performed by the ANG. The primary concern was noise and the potential impact to quality of life for those who live under the proposed airspace. Below is a list of the major environmental concerns identified during the informal meetings in addition to those raised by the public during the informal public comment period. The ANG FEIS and ROD were reviewed and a determination made that the issues identified below were adequately analyzed within the FEIS and ROD.

Issues of Concern

(1) Risk of aircraft accidents and the inability of local fire and rescue to respond to an accident.

(2) Concern about overflights over Route 17.

(3) Noise impacts to the Moffat School.

(4) Potential disproportionate effects on low income and minority populations. (Environmental Justice concerns).

(5) Risk of collisions with other airspace users.

(6) Potential impacts on children's health and safety.

(7) Noise and compatible land use, including startle effect on horses and other livestock and sleep disturbance.

(8) Potential impacts to tourism and property values.

(9) Inability to obtain ''natural quiet'' over National Park Service Parks.

(10) Potential Impacts to migratory birds and other wildlife.

(11) Accountability of the military pilots.

VII. Decision

After careful and thorough review of the ANG's FEIS, the FAA has determined that the FEIS complies with the National Environmental Policy Act of 1969, (42 U.S.C. Section 4371 et seq.), the CEQ's implementing regulations (40 CFR Sections 1500–1508), and FAA's order entitled ''Policies and Procedures For Considering Environmental Impacts'' (1050 1d). The FAA has considered the contents of the ANG FEIS, and the ANG ROD.

Under the authority delegated to me by the Administrator of the Federal Aviation Administration, I have decided to adopt the ANG FEIS pursuant to CEQ regulation 40 CFR 1506.3. Moreover, having considered the environmental and aeronautical comments received from the public, the FAA deems it necessary to undertake the additional mitigation measures identified above.

Dated September 28, 1999.

William J. Marx,

Manager, Environmental Programs Division, Air Traffic Management Program.

Right of Appeal

This decision is taken pursuant to 49 U.S.C. Section 40101 et seq. and 49 U.S.C. Section 47101 and constitutes an order of the Administrator, which is subject to review by the Court of Appeals of the United States in accordance with the provisions of 49 U.S.C. Section 46110.

Federal Aviation Administration,
Environmental Programs Division,
Air Traffic Airspace Management Program, Attn.: Elizabeth Gaffin,
rm. 422, 800 Independence Ave., SW, Washington, DC 20591.

Issued in Washington, DC, on October 1, 1999.

William J. Marx,

Manager, Environmental Programs Division.

[FR Doc. 99–26170 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–32]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 27, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW, Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack, (202) 267–7271 or Terry Stubblefield, (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 1, 1999.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29661.

Petitioner: Experimental Aircraft Association.

Section of the FAR Affected: 14 CFR 91.319(a)(2).

Description of Relief Sought: This exemption, if granted, would allow the owner of a special airworthiness category aircraft to be compensated for allowing his/her aircraft to be used for transition training and flight reviews under part 61 by authorized flight instructors.

[FR Doc. 99–26168 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and Date: 9:00 a.m.–5:00 p.m., November 15–16, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration

Participants are requested to register their intent to attend this meeting by October 29, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact

Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or e-mail at steven.CTR.albers@faa.gov.

Issued in Washington, DC on September 13, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–26172 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6268; Notice 1]

AmTran Corporation; Receipt of Application for Decision of Inconsequential Noncompliance

AmTran Corporation (AmTran), of Conway, Arkansas, has determined that some AmTran model RE (rear engine) school buses do not meet the emergency exits requirements for the rear push out windows specified in Federal Motor Vehicle Safety Standard (FMVSS) No. 217, ''Bus Emergency Exits and Window Retention and Release'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' AmTran has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 '' ''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 217, S5.2.3.4(b) requires that school buses that are equipped with a left side emergency exit door instead of a rear emergency exit door also be equipped with a rear push-out window that provide a minimum opening clearance 41 centimeters high and 122 centimeters wide.

AmTran has notified the National Highway Traffic Safety Administration that it had manufactured approximately 1,100 model RE school buses between January 1, 1998 and April 21, 1999 that do not provide for the minimum clearance requirements for the rear push-out emergency exit windows.

AmTran stated the following:

Description of Equipment Involved:

Some rear emergency exit windows in AmTran RE buses, with 74 inch head room, do not meet the requirement of 41 centimeter vertical opening as specified on FMVSS No. 217. The height of the window opening on the interior wall of the bus is 41.9 centimeters high. The window is hinged at the top, and when opened the bottom edge swings upward and outward with the assistance of ''gas springs''. When fully opened, the plane of the window inclines at its outward edge toward the ground at approximately 15 degrees. Around the window, there is a frame that projects toward the interior of the bus, perpendicular to the window surface. As the window rotates open, the interior edge of the frame rotates outward and downward, reducing the window opening to 38.8 cm or 2.2 cm less than the specified height.

Data and Arguments Supporting Petition:

While the units involved have an opening 2.2 centimeters less than the requirement of FMVSS 217 part S5.2.3.1(b), the windows exceed the requirements of Standard 217, part S5.4.2.1(c) Emergency exit windows. Part S5.4.2.1(c) specifies the following. ''After the release mechanism has been operated, each emergency exit window of a school bus shall, under the conditions of S6., both before and after the window retention test of S5.1, using force levels specified in S5.3.3.2, be manually extendable by a single occupant to a position that provides for an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters.'' The units involved even with the reduced opening have an unobstructed opening of 38.8 centimeters which exceed the minor axis by 5.8 centimeters. Therefore, a passenger able to exit the emergency exit windows shall easily clear the rear emergency exit window as well.

Interested persons are invited to submit written data, views, and arguments on the application of described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 4, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–26150 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6269; Notice 1]

IMPCO Technologies; Receipt of Application for Decision of Inconsequential Noncompliance

IMPCO Technologies (IMPCO), of Irvine, California, has determined that a number of 1997 and 1998 bi-fueled compressed natural gas (CNG) Chevrolet/GMC C2500 and Sierra model pickup trucks do not meet the requirements of S5.3 and S5.4 of 49 CFR 571.303, Federal Motor Vehicle Safety Standard (FMVSS) No. 303, ''Fuel System Integrity of Compressed Natural Gas Vehicles,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' IMPCO has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

FMVSS No. 303, S5.3 requires that CNG vehicles shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm 3⁄16 inch) high. S5.3.1 requires the statement: ''Service pressure kPa (_____psig),'' and S5.3.2 requires the statement ''See instructions on fuel container for inspection and service life.''

S5.4 requires that, when a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

IMPCO has notified the National Highway Traffic Safety Administration that in model years 1997 and 1998, it altered 400, 1997 and 285, 1998 Chevrolet/GMC C2500 and Sierra model pickup trucks that did not fully comply with the labeling requirements specified in 49 CFR 571.303. IMPCO stated that the noncompliance consists of deviations from the wording required on the CNG vehicle label and in the owner's manual.

IMPCO supported its application for inconsequential noncompliance by stating that an out-of-date version of FMVSS No. 303, which did not contain specific requirements, was used by the supplier that prepared the label and owner's manual supplement. As a result the CNG vehicle label applied near the refueling connection, and the owner's manual for the subject vehicles, did not contain the exact statements required by FMVSS No. 303, S5.3 and S5.4.

IMPCO stated that the refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. IMPCO also placed an additional label under the hood, on the fan shroud, that would be visible during more frequent routine service, such as fluid check and oil changes. This additional label again specifies the service pressure and the tank expiration date. IMPCO further stated that the owner's manual indicates the service life, inspection information, and also provides a form to record the expiration date. IMPCO believes that the labels and owner's manual supplement provided with these vehicles are responsive to and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used.

The required words and actual words are shown as follows:

FMVSS paragraph	Required label wording	1997 and 1998 Bi-fuel truck label wording
S5.3.	1SERVICE PRESSURE 24820 kPa (3600 psig)	3600 PSI SYSTEM OPERATING PRESSURES.
5.3.2	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	SEE CNG OWNERS MANUAL SUPPLEMENT FOR FUEL TANK SERVICE LIFE.

FMVSS paragraph	Required owner's manual wording	CNG truck owner's manual wording	1997 Manual	1998 Manual
S5.4	SERVICE PRESSURE 24820 kPa (3600 psig) ...	This system operates at pressures up to 3600 PSI (24.8 MPa). (p. iv).	X	X
		The CNG fuel system is designed to use a fill pressure of 3,600 psi (24.8 Mpa).at 70° F (21°C) (P. 6–3).	.....	X
		13.2 gallons (equivalent) (50 L) at 3600 psi (24.8 Mpa) and 70°F (21°C) (page 6–6).		
		13 GGE (Gasoline Gallon Equivalent) (49 L) at 3600 psi (24.8 Mpa) and 70° F (21°C). (page 6–6).	X	.....
		3600 PSI SYSTEM PRESSURE (page 7–7)	X	X
XS5.4	SEE INSTRUCTIONS ON FUEL CONTAINER FOR INSPECTION AND SERVICE LIFE.	A trained technician must remove the tank cover and perfrom a CNG fuel tank and mounting bracket inspection every three years or 36,000 miles (60,000 km) whichever comes first. (Page 7–6).	X	X
		The CNG fuel tank has a service life of 15 years. After the tank expiration date, the tank must be replaced by an authorized GM dealer. (Page 7–7).	X	X
		This (expiration) date is listed on the fuel tank and the fuel tank cover label. (Page 7–7).	X	.....
		This (expiration) date is listed on the fuel tank and the fuel tank, the fuel fill door label and the underhood bi-fuel information label. (Page 7–7).	.....	X
		CNG Fuel Tank Inspection Record (page 7–8)	X	X

IMPCO stated the following:

IMPCO believes that the labels and owner's manual supplement information provided with these vehicles are responsive and consistent with the rationale and intent of the requirements, even though the exact words required by the standard are not used. The actual labels and the owner's manual supplement provide equivalent information required by FMVSS 303, S5.3 and S5.4. The CNG refueling valve label clearly states the operating pressure and refers the user to the owner's manual for information about tank service life. Both the refueling valve and the underhood labels include the service expiration date and the owners manual indicates the service life, inspection information, and provide a form to record the expiration date.

Virtually all CNG refueling stations incorporate an overfill protection system. Granted, a few CNG fill stations exist that are capable of providing a fill greater than 3,000 psi, however, the vehicle fill valve is designed to be incompatible with fill stations that have a fill pressure greater than the vehicle's rated service pressure. For example, a vehicle with a fill valve rated at 3,600 psi would be capable of filling at a 3,600, 3,000 or 2,400 psi fill station. However, it would be incapable of filling at a 5,000 psi fill station.

Also, the subject vehicles are equipped with a CNG container validated up to 200 percent of the service pressure without leakage as required by FMVSS 304, S7.2.2 for such containers. Thus, even in the unlikely event of an overfill, the CNG containers are designed to provide adequate protection. IMPCO has not received any reports of injuries or property damage associated with overfilling of these vehicles and believes it is extremely remote that these deviations from FMVSS 303 label and owner's manual requirements could contribute to an injury or property damage incident.

For all of these reasons, IMPCO believes that this noncompliance is inconsequential to motor vehicle safety. Accordingly, IMPCO petitions that it be exempted from the remedy and recall provisions of the Motor Vehicle Safety Act in this case.

Interested persons are invited to submit written data, views, and arguments on the application of described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 4, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–26149 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6271; Notice 1]

Safeline Corporation; Receipt of Applications for Decision of Inconsequential Noncompliance

Safeline Corporation, of Denver, Colorado, has determined that a number of child restraint systems fail to comply with sections of 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and has filed appropriate reports pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' Safeline has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliances are inconsequential to safety.

Safeline has identified two noncompliant conditions, and has filed separate applications for each of these conditions. This notice addresses each of these applications. This notice is published under 49 U.S.C. 30118 and

30120, and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Omission of Air Bag Warning Label. FMVSS No. 213 has required rear-facing child restraints to be labeled with an air bag warning since August 1994 (59 FR 7643). Beginning on August 15, 1994, S5.5.2(k) of FMVSS No. 213 required all rear-facing child restraint systems to have a label warning the consumer not to place the rear-facing child restraint system in the front seat of a vehicle that has a passenger side air bag, and a statement describing the consequences of not following the warning. These statements were required to be on a red, orange, or yellow contrasting background, and placed on the side of the restraint designed to be adjacent to the front passenger door of a vehicle, visible to a person installing the rear-facing child restraint system in the front passenger seat.

This labeling requirement was revised in 1996 (61 FR 60206) to require an enhanced and much more prominent warning on a distinct label. In the case of each child restraint system that can be used in a rear-facing position and is manufactured on or after May 27, 1997, S5.5.2(k)(4) of FMVSS No. 213 requires this label to be permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and readable. The text portion of this label consists of a heading reading ''WARNING'', with the following messages under that heading:

DO NOT place rear-facing child seat on front seat with air bag.

DEATH OR SERIOUS INJURY can occur.

The back seat is the safest place for children 12 and under.

Opposite the text, the warning label has a pictogram showing an inflating air bag striking a rear-facing child seat, surrounded by a red circle with a slash across it. The label must also conform to size and color requirements specified in S5.5.2(k)(4)(i) through S5.5.2(k)(4)(iii).

Safeline has notified us that between June 14, 1997 and September 15, 1997, it sold between 750 and 900 Sit'n'Stroll Child Restraints, Model 3240, that do not have the revised air bag warning label required by S5.5.2(k)(4) of FMVSS No. 213. The noncompliance occurred because the seat cover assemblies for the affected units were manufactured prior to May 27, 1997, consistent with Safeline's normal production cycle and prior to the effective date of the new requirement. These work in progress seat cover assemblies were then used in final assembly subsequent to May 27, 1997.

Safeline supports its application for inconsequential noncompliance with the following:

Because of the significant lapse in time since the noncompliance, the products are no longer being used in the rear facing seating configuration. The purpose of the air bag warning statement is to prevent children from being placed rear facing in the front seat of a vehicle equipped with a passenger side air bag. Since it is recommended children remain rear facing for at least 12 months, and it has been 24 months since the products have been sold, it is likely these units are no longer being used in the rear facing position.

Seat cover subassemblies were manufactured prior to May 27, 1997.

Quantity of units not complying with amended rule is small. Between 750 and 900 units were sold that do not comply with the requirements.

Because existing warning statements are found on the labels of the product and in the instruction manual. While Safeline Corporation strongly concurs the new air bag warning statement is an effective enhancement in the proper usage of child restraint systems, the previously existing warnings clearly state the hazards of placing a rear facing child restraint in a seating position with an air bag. Additionally, the exposure provided by the widespread national media campaign has been effective in educating parents of the dangers regarding the placement of rear facing child restraint systems in vehicles with air bags.

The probability of a second hand owner receiving information through a recall notification is unlikely. Thus, the likelihood is small that a second hand owner, using the product in the rear facing position, would actually receive the recall notification.

Certification of Child Restraint to 25 Pounds in Rear-Facing Position. S7.1(c) of FMVSS No. 213 states that:

A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 10 kg (20 lbs) but not greater than 18 kg (40 lbs), or by children in a specified height range that includes any children whose height is greater than 850 mm but not greater than 1100 mm, is tested with a 9-month-old test dummy conforming to part 572 subpart J, and a 3-year-old test dummy conforming to part 572 subpart C and S7.2, provided, however, that the 9-month-old test dummy is not used to test a booster seat.

In October 1998, we requested that Safeline identify the dummy that was utilized to evaluate the Sit'n'Stroll child restraint, and provide a copy of each test report and any engineering analysis that formed the basis of Safeline's certification of the Sit'n'Stroll child restraint system to the performance requirements of FMVSS No. 213 for recommended usage greater than 22 pounds in the rear-facing seating configuration. In response, Safeline submitted test data from Calspan Corporation and the University of Michigan which reflected failures of seat back angle requirements and/or structural integrity requirements with a 3-year-old dummy positioned in the rear-facing position. However, passing test results were achieved for these requirements with a 20-pound TNO dummy weighted to 25 pounds and positioned in the rear-facing position. Safeline concluded that the Sit'n'Stroll child restraint model ''could safely be used in the rear-facing position at a weight not to exceed 25 pounds.''

In June 1999, we notified Safeline that the Sit'n'Stroll child restraint does not appear to meet the applicable requirements of FMVSS No. 213 with the 3-year-old dummy in the rear-facing position. Safeline's determination that the Sit'n'Stroll child restraint model complies with FMVSS No. 213 based on test results with the 20-pound TNO dummy weighted to 25 pounds in the rear-facing position is invalid because this dummy is not specified by FMVSS No. 213. All Sit'n'Stroll child restraints, model 3240, manufactured by Safeline between November 1996 and June 1999 have been recommended for use for up to 25 pounds in the rear-facing position. A total of 21,759 units are affected by this noncompliance.

Safeline supports its application for inconsequential noncompliance with the following:

The Sit'n'Stroll meets all rear facing testing criteria using a 20-pound TNO dummy weighted to 25 pounds. Our testing has shown that an infant dummy weighted to 25 pounds had minimal additional affects on the seat back rotation angle results relative to the dummy specified in FMVSS No. 213. The maximum seat back rotation angle we have experienced in dynamic testing is significantly less than the allowable 70-degree maximum. These results provided the confidence to previously recommend the usage of the Sit'n'Stroll for children weighing no more than 25 pounds in the rear facing seating position.

Safeline Corporation is aware of no incidents, claims, reports, injuries, fatalities or warranty issues of children 22 to 25 pounds being injured or harmed in any way by the extended use of the Sit'n'Stroll.

The large surface area of the base of the Sit'n'Stroll reduces the protrusion of the child restraint into the automobile's seat. The Sit'n'Stroll's unique design—the wide, uninterrupted base surface area—relative to other convertible child restraints, produces seat back rotation angle results well below the maximum allowable criteria by more effectively distributing the dynamic forces.

Interested persons are invited to submit written data, views, and arguments on the applications of

Safeline described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested, but not required, that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 1999.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: October 4, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–26151 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 10:00 a.m. on Friday, October 15, 1999, by conference call in the Office of the Administrator, room 5424, 400 7th Street, SW, Washington, DC. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than October 12, 1999, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on October 4, 1999.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 99–26270 Filed 10–6–99; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

	Railroad Freight Index	
	Index	Deflator percent
1991	409.5	[1]100.00
1992	411.8	99.45
1993	415.5	98.55
1994	418.8	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Scott Decker (202) 565–1531. (TDD for the hearing impaired: (202) 565–1695).

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 99–26203 Filed 10–6–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 64, No. 194

Thursday, October 7, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 172

[Docket No. RSPA-99-6212 (HM-189P)]

RIN 2137-AD38

Hazardous Materials Regulations: Editorial Corrections and Clarifications

Correction

In rule document 99–24898 beginning on page 51912 in the issue of Monday, September 27, 1999, make the following corrections:

§ 172.101 [Corrected]

On page 51917, in §172.101:

a. Under ''[ADD:].'', in the second entry ''or'' should read ''*or*''.

b. Under ''[REVISED:].'', in the first entry ''2.2, 5.1'' should appear under the ''Label Codes'' heading and removed from under the ''Special Provisions'' heading.

[FR Doc. C9–24898 Filed 10-6-99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday
October 7, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Monkfish Fishery Management Plan; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 981223319–9167–02; I.D. 112598B]

RIN 0648–AJ44

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Monkfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Monkfish Fishery Management Plan (FMP). These regulations implement the following measures: Establishment of two monkfish management areas; target total allowable catch levels (TACs); limited access; effort limits through days-at-sea (DAS) allocations; trip limits and incidental harvest allowances; minimum size and mesh limits; gear restrictions; spawning season closures; a framework adjustment process; permitting and reporting requirements; and other measures for administration and enforcement. The intended effect of this rule is to stop overfishing and rebuild the monkfish stock. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

DATES: This rule is effective November 8, 1999.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), Suntaug Office Park, 5 Broadway (US Rte. 1), Saugus, MA 01906–1036.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION: This final rule implements the measures contained in the Monkfish FMP, which were approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 3, 1999. All of the measures contained in the Monkfish FMP but one, the ''running clock'' provision, as originally submitted, were approved by NMFS on behalf of the Secretary. A proposed rule to implement these measures was published on February 16, 1999 (64 FR 7601). NMFS disapproved the running clock provision because it believes that the measure fails to meet national standard 7 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with regard to minimizing costs. This provision would have placed an incremental burden on the administration and enforcement of this measure. Additionally, the provision could have conflicted with multispecies vessels also on a cod running clock. Instances could have occurred where a vessel called out with overages in both fisheries, or in one and not in the other, thereby creating an administratively burdensome and confusing program.

Details concerning the justification for and development of the Monkfish FMP and the implementing regulations were provided in the notice of availability (NOA) of a Monkfish FMP (63 FR 66524, December 2, 1998) and in the preamble to the proposed rule (64 FR 7601, February 16, 1999) and are not repeated here.

Approved Measures

Two Management Areas

The FMP divides the Northeast monkfish fishery into two management areas separated by a line that roughly runs along Georges Bank from Cape Cod, MA, to the Hague Line. One is the Northern Fishery Management Area (NFMA) and the other is the Southern Fishery Management Area (SFMA).

Total Allowable Catch

The FMP establishes a procedure for setting annual target TAC levels for monkfish, with the exception of target TACs for the fishing year beginning May 1, 1999, which are established by this rule. The target TACs will be based on the best available scientific information and will provide a measure by which to evaluate the effectiveness of the management program and to make annual determinations on the need for adjustments to this program. During the first fishing year beginning May 1, 1999, the annual target TACs are set at 5,673 mt (12,506,614 lb) and 6,024 mt (13,280,423 lb) in the NFMA and the SFMA. The target TAC levels will be set or adjusted so as to attain a fishing mortality rate of 0.07 in the NFMA and of 0.26 in the SFMA for the 1999, 2000, and 2001 fishing years. Beginning with the 2002 fishing year, the target TACs will be set so as to halt overfishing in 2002 and allow rebuilding to the stock biomass targets from fishing years 2002 to 2009.

Qualification Criteria for Limited Access

Vessels qualify for monkfish limited access based on a vessel's, or a replaced vessel's, historic participation from February 28, 1991, to February 27, 1995 (the monkfish control date).

Subject to certain restrictions set forth in this rule, a vessel qualifies for a limited access monkfish permit if the vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,298 kg) whole-weight during the qualification period. Vessels that do not have multispecies or scallop limited access permits and qualify according to this criterion will receive a ''Category A'' monkfish limited access permit. Vessels that have a multispecies or scallop limited access permit and qualify according to this criterion will receive a ''Category C'' monkfish limited access permit. (Note: The fisheries for Atlantic scallops and Northeast multispecies are governed by 50 CFR part 648—Fisheries of the Northeastern United States, Subparts D and F, respectively. The limited access fisheries for scallops and Northeast multispecies are closed to new entrants.) All vessels not qualifying for a Category A or C permit that are less than 51 gross registered tons (GRT) and vessels of any size that have a multispecies DAS permit will qualify for a limited access monkfish permit if the vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,295 kg) whole-weight during the qualification period. Vessels without a multispecies or scallop limited access permit that qualify according to this criterion will receive a ''Category B'' monkfish limited access permit. Vessels with a multispecies or scallop limited access permit that qualify according to this criterion will receive a ''Category D'' monkfish limited access permit. (See Table 2 to the Preamble.)

Permitting and Reporting Requirements

Vessels that catch monkfish must have either a limited access monkfish

permit (category A, B, C, or D) or a monkfish incidental catch permit to fish for, possess, retain or land monkfish. (See Table 2.) Vessel owners must also submit Vessel Trip Reports. Vessels with a limited access monkfish permit must call in and out of the monkfish DAS program when participating in the monkfish fishery. Dealers that land monkfish must apply for a Dealer Permit and submit landings reports.

Allocations of Monkfish DAS

The DAS allocations for limited access monkfish permit holders are shown in the following table. Forty (40) DAS are allocated to limited access permitted vessels on November 8, 1999 (Year 1) and at the beginning of Years 2 and 3. In Year 4 monkfish DAS will be set to zero (0), unless other action is taken by the Councils and implemented by NMFS. (See Table 1 to the Preamble.)

Table 1. Monkfish Fishing Year and Maximum Annual DAS Allocations

Fishing Year[1]	Maximum Annual DAS Allocation:
November 8, 1999 - April 30, 2000	40
May 1, 2000 - April 30, 2001	40
May 1, 2001 - April 30, 2002	40
May 1, 2002 - April 30, 2003 and subsequent fishing years	0

[1] For the first year of implementation of the FMP, 40 DAS will be allocated to limited access permitted vessels beginning on November 8, 1999. Beginning in year 2 and subsequent years, DAS will be allocated for the monkfish fishing year (May 1 - April 30).
[2] Reserved

Any vessel may carry over a maximum of 10 unused monkfish DAS to the following fishing year's allocation (including beyond May 1, 2002). Unused monkfish DAS may not be carried over beyond the year following the one in which they were unused.

While a multispecies and scallop vessel that qualifies for a monkfish limited access permit (Categories C or D) receives the same number of monkfish DAS as allocated to other permit categories, up to a maximum of 40 DAS, when such a vessel fishes under the monkfish DAS program, the trip also counts against a multispecies or scallop DAS, whichever is applicable. A combination vessel that holds both a multispecies and a scallop permit may fish under a monkfish DAS during either a multispecies or scallop DAS, provided that unused multispecies or scallop DAS are available. Such a vessel must declare whether to count DAS against the multispecies or scallop DAS at the time it calls into the monkfish DAS program. (See Table 2 to the Preamble.)

Table 2—Monkfish permit categories, qualification criteria for permit categories, and DAS allocations for vessels on a monkfish DAS

Permit Category	Qualification Criteria[1] for Permit Categories (landed weight *expressed in pounds)*	DAS Allociation[2]
A	Vessels that do not possess a multispecies or scallop limited access permit must have landed ≥50,000 lb tail-weight or 166,000 lb whole weight of monkfish during the qualifying period..	40 DAS
B	Vessels less than 51 GRT that do not possess a multispecies or scallop limited access permit and do not qualify for a Category A Permit must have landed monkfish ≥7,500 lb tail-weight or 24,900 lb whole weight of monkfish during the qualifying period..	40 DAS
C	Vessels that possess a multispecies or scallop limited access permit must meet landing criteria as required for Permit Category A..	Up to 40 DAS & vessel must also be on a multispecies or scallop DAS
D	Vessels that possess a multispecies limited access permit and vessels less than 51 GRT that possess a scallop limited access permit that do not qualify for a Category C Permit must meet landing criteria as required for Permit Category B..	Up to 40 DAS & vessel must also be on a multispecies or scallop DAS

[1] Vessel must have landed monkfish during qualifying period, i.e., February 28, 1991, through February 27, 1995, in the amounts indicated.
[2] DAS allocations indicated are for fishing years 1999, 2000, and 2001. For fishing years 2002 and thereafter, monkfish DAS will be set to zero (0), unless other action is taken by the NEFMC and MAFMC and implemented by NMFS.

Trip Limits During a Monkfish DAS

No monkfish trip limits apply to vessels fishing during a monkfish DAS prior to May 1, 2000. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch (for the period May 1, 1999 - April 30, 2000) is less than or equal to the Year 1 SFMA target TAC, a notification will be published in the **Federal Register** specifying that no monkfish trip limit applies to a vessel that is fishing under a monkfish DAS in the SFMA. Otherwise, the following trip limits will apply in the SFMA beginning May 1, 2000, depending on the type of monkfish permit the vessel holds and the type of gear the vessel uses: (1) Category A and C vessels using mobile gear during a monkfish DAS, a landing limit of 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight per DAS; (2) Category B and D vessels using mobile gear during a monkfish DAS, a landing limit of 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight per DAS; and (3) any vessel using fixed gear during a monkfish DAS, a landing limit of 300 lb (136 kg) tail-

weight or 996 lb (452 kg) whole weight per DAS.

Incidental Catch for Vessels Not on a Monkfish DAS

Beginning November 8, 1999, the following measures apply:

1. Vessels lawfully using large mesh (5½-inch (14–cm) diamond or 6–inch (15.3–cm) square mesh throughout the body, extension, and codend) while not on a monkfish, multispecies, or scallop DAS, may retain and land whole monkfish up to 5 percent of the total weight of fish on board (or any prorated combination of tail-weight and whole weight percentage based on the conversion factor in § 648.94 of subpart F—Management Measures for the Northeast Multispecies and Monkfish Fisheries).

2. Vessels that are not under any DAS and fishing with small mesh, rod and reel, or handlines may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight per trip. Small mesh is considered to be any mesh smaller than the large mesh described in paragraph 1. Multispecies vessels that are ≤ 30 ft (9.1 m) and elect not to fish under the multispecies DAS program may also land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

3. Multispecies vessels with a monkfish incidental catch permit fishing in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. If the vessel fishes for any portion of the trip in the SFMA, it may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

Prior to May 1, 2002

1. Vessels with a multispecies permit and a Category C or D limited access monkfish permit - A multispecies vessel that fishes only in the NFMA has no trip limit when it is on a multispecies DAS. If the vessel fishes for any portion of the trip in the SFMA during a multispecies DAS, it may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS while using mobile gear or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS while using fixed gear.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - A vessel that has a scallop dredge on board or is on a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS when on a scallop DAS.

After April 30, 2002

1. Vessels with a multispecies and a Category C or D limited access monkfish permit - Multispecies vessels may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per multispecies DAS, or 25 percent of total weight of fish on board, whichever is less. Vessels using fixed gear in the SFMA may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per multispecies DAS.

2. Vessels with a sea scallop and a Category C or D limited access monkfish permit - Vessels that have a scallop dredge on board or are on a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

3. Sea scallop vessels with a monkfish incidental catch permit - These vessels may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per scallop DAS.

Minimum Size Limits

Beginning November 8, 1999, possession or landing of monkfish tails measuring less than 11 inches (27.9 cm) in length or whole monkfish less than 17 inches (43.2 cm) total length by any vessel that has a Federal fisheries permit or any vessel fishing in the exclusive economic zone is prohibited.

Beginning on May 1, 2000, in Year 2 of the FMP, the minimum monkfish size limit for vessels fishing or landing in the SFMA, only, will be 21 inches (53.3 cm) total length or 14 inches (35.6 cm) tail length. If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA target TAC, a notification will be published in the **Federal Register** specifying the minimum monkfish size limit of 17 inches (43.2 cm) total length or 11 inches (27.9 cm) tail length for vessels fishing for, catching, or landing monkfish in the SFMA.

Gillnet Limits

A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may fish with, haul, possess, or deploy up to 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit or fishing under a monkfish DAS may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets cannot be longer than 300 ft (91.44 m), or 50 fathoms, in length. Beginning November 8, 1999, all monkfish gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS are allowed one tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags are obtained as described in § 648.4.

Time out of the Fishery

Beginning January 1, 2000, Vessels with Category A or B permits (i.e., ''monkfish-only'') are required to declare out of the monkfish fishery and may not use a monkfish DAS for a continuous 20-day block during the months of April, May, and June. Such vessels may engage in other fisheries in which they may legally participate, but they may not possess any monkfish during this 20-day block. Specified periods to protect groundfish spawning (when multispecies vessels are required to declare out of the fishery) also apply to multispecies DAS used when targeting monkfish. Multispecies DAS vessels that declare out of the multispecies fishery for any reason, including the fulfillment of their 20-day out periods, are prohibited from possessing monkfish. Vessels that target species other than groundfish and monkfish are, however, allowed to participate in exempted fisheries during the mandatory groundfish tie-up periods. Multispecies vessels with a category C or D monkfish permit are not required to comply with the time-out requirements described here for monkfish-only vessels.

Framework Adjustment Process

The framework adjustment process includes annual reviews by a Monkfish Monitoring Committee (MFMC), which evaluates the effectiveness of the FMP to meet the fishing mortality and rebuilding targets. The MFMC develops management options for consideration and approval by the Councils, and the Councils are required to recommend changes, adjustments, or additions to the management measures in effect to the Regional Administrator, by February 7 of each year, for implementation at the beginning of the fishing year. The Regional Administrator may select

measures recommended by the MFMC that were not rejected by either Council if the Councils fail to submit a recommendation. Adjustable management measures include: (1) target TACs, (2) Overfishing Definition reference points, (3) closed seasons or closed areas, (4) minimum size limits, (5) liver to monkfish landings ratios, (6) annual monkfish DAS allocations and monitoring, (7) trip or possession limits, (8) blocks of time out of the fishery, (9) gear restrictions, (10) transferability of permits and permit rights, and (11) other frameworkable measures in 50 CFR 648.90 and 50 CFR 648.55.

Restrictions on Liver Landings to Prevent High-grading

Landings of monkfish livers are restricted to 25 percent of the total weight of monkfish tails or 10 percent of the weight of whole monkfish, whichever is applicable.

Minimum Mesh and Gear Restrictions

Vessels that fish while they are called into the monkfish DAS program must use large mesh, unless the vessel is also fishing during a multispecies DAS. When called into the monkfish (but not the multispecies) DAS program, large mesh is defined as 10–inches (25.4–cm) square or 12–inches (30.5–cm) diamond for trawls and 12–inches (30.5–cm) diamond for gillnets. Vessels that have a category C or D permit and a limited access sea scallop permit may not use a dredge during a monkfish DAS.

Comments and Responses

Four written comments on the Monkfish FMP were received during the comment period date established by the NOA of the Monkfish FMP, which ended February 1, 1999. These comments were considered by NMFS before it approved the Monkfish FMP on March 3, 1999. Those comments received during the comment period on the FMP are also addressed here.

NMFS received additional comments on the proposed rule, as well as comments on the FMP, during the comment period specified in the proposed rule, which ended on March 26, 1999. Because the comment period for the rule was distinct from, and followed the comment period for the FMP, comments received during the proposed rule period were not considered in NMFS's determination to approve the Monkfish FMP. However, these comments were considered in approval and implementation of the proposed measures by this final rule. Of the second group of letters received, only comments on the proposed rule are addressed here since the comment period on the FMP had closed prior to their submission.

Comment 1: While one commenter agreed that the FMP ''is likely to eliminate overfishing and begin stock rebuilding,'' it criticizes what it perceives as an inequity regarding the DAS allocated to scallop and multispecies permit holders, relative to the fishing time allocated to holders of other Northeast region limited access fishing permits. Specifically, the commenter objects to the provision that prevents ''monkfish-qualifying'' scallop and multispecies permit holders from receiving an allocation of monkfish directed DAS in excess of their scallop and multispecies DAS. The commenter, viewing this provision as discriminatory, requested that it be disapproved and returned to the Councils for further deliberation.

Three comments stated that New Bedford/Fairhaven fishermen are being forced to trade an economic viability that would otherwise be available to them - that is, that there must be a trade-off of days in the scallop and multispecies fisheries. In addition, scallop and multispecies fisheries are forced to forfeit an economic opportunity in their separately regulated, unrelated industry. Other participants in the monkfish fishery that do not have a multispecies or scallop permit forfeit nothing to be able to participate in this fishery. At the very least, for those vessels that can demonstrate that they have participated, there should be a limited monkfish fishery, exempted from either their scallop or groundfish DAS.

Response 1: Most multispecies and scallop vessels will qualify for monkfish limited access based on a vessel's monkfish landings while targeting a mix of multispecies/monkfish or scallops/monkfish. Most monkfish are landed as incidental catch from groundfish and scallop fishing. In the past, this incidental catch accounted for over 80 percent of the catch of monkfish, but increases in directed effort in the early to mid-1990s helped reduce that incidental catch proportion to 70 percent. In keeping with the mixed catch nature of these fisheries and the type of fishing effort that qualifies the vessel, it is necessary that, when on a monkfish DAS, trips that exceed the monkfish incidental catch allowances must also count against the multispecies or scallop DAS. If multispecies and scallop vessels were able to take their monkfish DAS apart from (and in addition to) multispecies or scallop DAS, fishing mortality goals could not be met. In response, the Councils would have to reduce monkfish DAS allocations to uneconomic levels, possibly to levels that are less than one trip length in duration.

Comment 2: Many commenters felt that the rule was inconsistent with national standard 2, which requires use of the best scientific information available, for several reasons. First, landings data used in the development of the management measures in the FMP (through 1996) were from a period prior to the implementation of the exempted area located primarily off the Continental Shelf. Second, the FMP's discussion of economic impact is limited to old data and vessel owners only. Third, the existing data do not support management based on two stocks, and the northern and southern areas are arbitrarily divided into management areas without evidence that the areas contain different stocks. Fourth, the stock assessment does not show a large biomass of large mature monkfish beyond the continental shelf, as evidenced by existing landing slips. One group felt that these inadequate data led to the development of over-restrictive specifications set forth in the rule.

Several commenters noted that the Northeast Fisheries Science Center (NEFSC) bottom trawl surveys do not historically land significant amounts of monkfish. One commenter charged that fishery dependent data, such as landings, harvesting locations, depth of water at locations, and size landed, have been ignored or minimized during FMP development by not including 4 years of mandatory reporting data.

Response 2: NMFS has determined that the management measures were based on the best scientific information available and upon sound conclusions based on such information where no direct information or data were available. The most recent detailed stock assessment was conducted by SAW 23 (NEFSC–1997) during the fall of 1996. This assessment used fishery-dependent and survey data through the end of 1995 to evaluate the status of the monkfish resource. Survey data are the most complete data and, therefore, the best scientific information available. The estimates of fishing mortality trends from 1963 to 1995 were analyzed in 5-year blocks to smooth the inter-annual variation that occurs in a randomized survey. The analysis indicated that adding 1997 data would not radically alter the estimates of fishing mortality, although the proportion of monkfish at larger size may still be declining.

Admittedly, while the surveys do not encompass the entire range of the monkfish resource - no samples were taken offshore of the Continental Shelf

edge - these surveys do provide a reasonable estimate of stock abundance for that portion of the population in the coastal and shelf areas. The surveys are also the only scientific data available on this subject. The fact that a portion of the monkfish resource lies in waters seaward of the edge of the continental shelf has been known since at least the 1950s. It is clear from the severe depletion of the resource on the shelf (as revealed by NMFS' surveys) that subsidies or exchanges of fish from deep to shallow waters were insufficient to halt the decline of the inshore portion of the resource due to fishing. This implies that the offshore portion of the resource is small and/or the exchange rate is low. In any regard, the severe depletion of the shallow portions of the resource in the face of increased fishing is indicative of the vulnerability of this resource to harvest. Given the likely greater sensitivity of deep-water resources to exploitation, there is no reason to believe that an intensive, unregulated fishery in the offshore waters could be sustained. A prudent use of the ''precautionary management'' principal, as envisioned in the Sustainable Fisheries Act, would be to assume that the offshore portion of this resource would be no more productive than the inshore (depleted) portion of the resource and to develop appropriate management regulations. This is the basis of the FMP.

The portion of the range of monkfish not included in the NEFSC surveys is in deep water (>150 fathoms). Based on the continued low levels of abundance throughout the shelf, as indicated by recent surveys, there is no evidence that the deep water portion of the resource is contributing a significant amount of recruitment to the surveyed region. Whatever recruitment is being provided from deep water is jeopardized by the current areal expansion of the commercial fishery into these areas.

Furthermore, in addition to the survey-based estimates, the 21st SAW included monkfish within its comprehensive assessment of the northeast demersal finfish complex. Most of the analyses in the comprehensive assessment were intended to show broad, long-term trends that were consistent across species. The monkfish indices were not classified by management area, but showed a decline to low levels of biomass through 1987. Since that time, biomass has fluctuated without trend at low levels, while abundance has increased in the NFMA.

More recent information does not contradict the conclusion of SAW 23 that monkfish are at least fully exploited and might be over-exploited. Given monkfish's wide range and the extent of the surveys, the FMP's management measures are based on the best scientific information available and appear to be consistent with national standard 2. As other data become available, they may be incorporated by way of management measures altered under the framework provision.

Finally, the division of the monkfish fishery into two management areas is partly based on the biological characteristics of the resource and partly based on the differences in fisheries in the Gulf of Maine versus areas to the south. Although growth rates are similar for monkfish in both areas, monkfish demonstrate different patterns in recruitment and stock biomass over the survey time series. There appears to be little adult migration between the two areas and egg masses from spawning in the Gulf of Maine probably stay within the Gulf of Maine and northern Georges Bank.

Catches from each area will be monitored to evaluate the effectiveness of the management measures to meet the individual mortality objectives.

Comment 3: One commenter felt that the FMP and its regulations violate national standard 3, relating to managing fish stocks as a unit, because the NEFSC survey of the stock does not include the Continental Shelf (200 m, or 100 fathoms), where a directed fishery is prosecuted. This comment was echoed by all of the legislators and by most of the commenters who faulted the overfishing definition for including no data from offshore of the Continental Shelf edge, where significant monkfish effort was directed after adoption of the Northeast Multispecies FMP's Amendment 7. One commenter felt that monkfish in this area should be managed via establishment of a separate management area. Most commenters emphasized that NMFS had approved a monkfish exemption area more than 2 years ago in that area, and most commenters added that the significant landings from there in the past 2 years are not reflected in the FMP.

Response 3: NMFS has determined that the Monkfish FMP and its implementing regulations are consistent with national standard 3. National standard 3 requires that a stock be managed as a unit throughout its range, and that interrelated stocks be managed as a unit, or in close coordination. Data available indicate that the monkfish range from Canadian waters to Cape Lookout, North Carolina, and possibly further south. Since it is unclear if there are several stocks within this range, the stock is managed in close coordination throughout the known area. While the NEFSC survey does not routinely sample beyond the continental shelf break, NMFS is confident that a representative sample of the population is accounted for in the survey. Further information on this use of survey data can be found in Response 2.

Comment 4: Several commenters felt that the proposed regulations violate national standard 4, relating to fairness and equity of the measures to fishers. Specifically, several commenters maintained that the FMP does not accurately depict the socioeconomic impact of the regulations on New Bedford, does not mention New Bedford's reliance on fishing in the monkfish exempted area offshore, would increase the unemployment roles in the Commonwealth of Massachusetts, and disproportionately impacts New Bedford scallopers, draggermen, wholesalers, and processors.

Many commenters maintained that no mention was made of fish processing companies in the discussion of economic impacts and stated that the economic impact incorporated in the FMP was not subject to scrutiny by economists. One commenter stressed that denying access to the deep water fishery in the canyons will have a negative effect on New Bedford's economy and that there was no consideration of this when proposing this measure. A fishery supply company said that mesh changes from 8 inches (20.3 cm) in the codend to 10 inches (25.4 cm) square or 12 inches (30.5 cm) diamond in the codend will devastate its business in that it will result in its possessing a mesh inventory that will have no other application.

Response 4: The FMP considers the socioeconomic impact on New Bedford, as well as all ports that land monkfish. Data in the FMP list monkfish revenue by port (including New Bedford) from 1994 through 1997. Supplement 1 to the Monkfish FMP, dated October 23, 1998, also summarizes the consequences of the proposed action for small businesses, including processors in New Bedford. During the second round of public hearings, the Councils were given data for New Bedford's fishing industry, including the New Bedford processing sector, which were considered when assessing economic and social impacts.

National standard 4 requires fisheries regulations not to discriminate against residents of different states and that any allocation of fishing privileges be fair and equitable to all such that the allocation be calculated to promote conservation and that no particular entity acquire an excessive share of such

privileges. The Councils and NMFS considered these factors, as incorporated in the FMP and other documents, in developing the Monkfish FMP and concluded that the measures adopted were the best suited to provide fair and equitable fishing opportunities to all sectors of the fishery.

Comment 5: Several commenters felt that the changes to allow North Carolina industry to qualify for limited access permits were unfair.

Response 5: The 1997 public hearing document erroneously indicated that the southernmost line of the SFMA would be at the Virginia-North Carolina (NC) border, which would have exempted NC catches from management. In fact, the southernmost line is the North Carolina/South Carolina border. Under the correct provision, NC fishermen are subject to the same qualification criteria that apply to vessels in other states and may use state landings data to document their participation in the monkfish fishery. There is no bias that excludes NC participants from meeting the limited access criteria, and NC vessels that do not qualify appear to be indistinguishable from vessels in other states that do not qualify. This error was corrected in subsequent versions of the document, which were available to the public. Fishers affected by these measures were thus provided ample opportunity to comment on them, and the Councils and NMFS were fully aware of comments concerning NC participants before the Councils adopted the FMP.

Comment 6: One commenter stated that unreasonable trip or daily limits cause a great deal of discards at sea, which do not survive.

Response 6: NMFS does not believe that the trip or daily limits established in the Monkfish FMP are unreasonable or that they will result in a great deal of discards. In fact, after implementation of the FMP, there are no trip limits established in the NFMA for the first 3 years nor during the first year in the SFMA for limited access monkfish vessels fishing during either a monkfish or multispecies DAS.

Comment 7: A processor commented that the preamble to the proposed rule states that the rebuilding period is 10 years, based on consideration of the status and biology of the stock and on the needs of fishing communities. The commenter continued that the data relevant to the biology and to the status of the stock have not been acquired by NMFS in the 8 years of looking at the species and that the assessment of the needs of the communities was grossly inadequate in the FMP. Thus, it is unrealistic to state credibly to the constituents of this fishery that their community needs determined the rebuilding period.

Response 7: Sections 304(e)(4)(A)(i) and (ii) of the Magnuson-Stevens Act requires that the time period specified for ending overfishing and rebuilding the fishery shall be as short as possible, not to exceed 10 years. The FMP takes into consideration the needs of the communities as justification for establishing the 10-year rebuilding period and not a shorter rebuilding period. Further, as stated previously, the management measures in the FMP must be based on the best scientific information available.

Comment 8: Several commenters commented that the proposed rule is not consistent with national standard 1 because the FMP cannot achieve optimum yield as it seeks to return stock to a level that nearly equals an unfished state, and that the F_{target} and $F_{threshold}$ dates (1970–1979) predate the directed and even incidental fisheries and, therefore, are not relevant when attempting to identify a parameter for optimal sustainable yield.

Response 8: Threshold fishing mortality rates are estimates of F_{rep}, the fishing mortality rate that results in long-term replacement of the stock. These threshold values are estimated as the average mortality rate for a period when monkfish in the two management areas were relatively abundant and stable. Based on biological data from the research survey, the monkfish technical working group recommended that this period be 1970–1979.

This is part of the overfishing definition, which describes overfishing thresholds that should be avoided and management targets to be achieved. The definition is consistent with NMFS's ''Scientific Review of Definitions of Overfishing in U.S. Fishery Management Plans'' and complies with the requirements of the Sustainable Fisheries Act and national standard 1 guidelines. For a further discussion of compliance with national standard 1, see Section 5.1 of the Monkfish FMP.

Comment 9: One commenter noted that there is no accommodation in the proposed rule for scallop vessels as pertains to incidental catch for vessels not on a monkfish DAS.

Response 9: Such accommodation is specified at § 648.94(c)(2)(i) and (ii).

Comment 10: One commenter stated that the MFMC should have more than two industry representatives. Conversely, another group stated that the Magnuson-Stevens Act should not allow industry stakeholders to be committee members because the resultant plan represents that member's interests and further questions the validity and constitutionality of a law ''written for and by a few participants in the industry.''

Response 10: The various species monitoring committees established by the Councils in the Northeast Region are balanced in their representation and usually include one industry representative. Because the MFMC encompasses two management areas, it will have two representatives to present the industry perspective in matters before the MFMC. There is also ample evidence of extensive and wide-ranging industry involvement at meetings of the Oversight and Industry Advisory Committees and at Council meetings, in developing this FMP. Further, the Magnuson-Stevens Act allows for industry stake-holders to participate in FMP development. All Council and committee meetings are open to public participation.

Comment 11: One industry processor commented on the dealer reporting burden estimate specified under the Paperwork Reduction Act (PRA). The commenter said that the dealer employment report takes approximately 30 minutes to do, not the 2 minutes per report estimated by NMFS, and that vessel trip reports take approximately 15 minutes per report, not the 5 minutes per report estimated by NMFS.

Response 11: The dealer employment data is part of the fishery products report (NOAA Form 88–13) in the Processed Product Family of Forms, OMB Control No. 0648–0018. The employment data on that form is mandatory, while the remainder of the data requested on the form is voluntary. The employment data is estimated to take 2 minutes per response, whereas the entire report is estimated at 30 minutes per response. NMFS estimates of burden for meeting all reporting requirements, including the vessel trip reports, reflect only the additional burden placed on respondents for items not normally collected in the normal course of their business practices.

Comment 12: One commenter stated that there is no provision in the proposed rule for notifying vessel owners of Monkfish Incidental Catch Permits. The commenter added that there is no apparent notification of the entire industry, including all vessels registered as fishing vessels, that possession of monkfish requires a permit for which they must apply.

Response 12: Section 648.4(a)(9) of the proposed rule states that ''any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish

permit to fish for, possess, or land any monkfish in or from the EEZ.'' An incidental catch permit for monkfish is an open-access permit - it is available to any vessel, at any time, wishing to fish for monkfish. Consistent with other species FMPs, the publication of these regulations as a final rule in the **Federal Register** will serve as notification to vessel owners. Additionally, after the approval of the FMP, the NMFS Northeast Region mailed a letter explaining the permitting process to all monkfish permit pre-qualifiers, past and present, and to all current permit holders of any fishery permit.

Comment 13: A commenter questioned the skin-on requirement for fish or parts, proposed under the section ''Monkfish minimum fish sizes.'' The commenter maintained that, in practice, monkfish cheeks and livers are generally not landed with the skin on. The proposed rule should also make clear that possession of monkfish cheeks is allowed.

Response 13: The skin-on requirement is for purposes of determining compliance with the minimum tail size requirement. Specifically, the minimum fish size, as applied to the tail, is determined by measuring from the fourth dorsal spine, which must, therefore, be intact. Thus, for enforcement purposes, the skin must remain on the tails. NMFS presumes that livers and cheeks will be processed only from the same legal-sized fish from which tails are obtained. NMFS further recognizes that it is not possible to land a liver ''skin-on.'' Since the liver and cheeks are not a determining part of the minimum fish size requirement, the skin-on requirement does not apply to them.

Comment 14: A commenter said that the proposed rule states that the procedures for administering the trip limit for cod under the Northeast Multispecies FMP apply to landings of monkfish during a monkfish DAS and added that clarification is needed for those not familiar with the multispecies FMP.

Response 14: Due to NMFS disapproval of the running clock provision, the particular section referenced by the commenter has been removed from this final rule. Therefore, no clarification is necessary.

Comment 15: A vessel owner stated that:

> the proposed rule violates the Regulatory Flexibility Act (RFA) because 1) it invokes a policy that has *takings implementations* as set out in Executive Order (E.O.) 12630 in Sect. 601 of the Act and does not compensate for the takings; 2) it does not follow the *regulatory philosophy* in E.O. 12866 of the Act, which requires NMFS to select regulatory approaches to maximize net benefits; 3) NMFS has not based its decision on the *best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation* as set out in E.O. 12866, Sect. 1(b)(7) in Sect. 601 of the Act; 4) it does not *impose the least burden on society, including individuals, businesses of different sizes* * * * as required in E.O. 1206 c, Sect. 1(b)(11) and is not *simple and easy to understand language* as required in Sect. 1(b)(12) of the Order; 5) it is a *significant regulatory action* under E.O. 12866 and requires a *regulatory plan* approved by the Agency head, which requirement has not been met as required in Sect. 4(C)(A) through (F); 6) no *RFA* has been prepared describing the impact of the proposed rule on small entities (boat owners, processors, and related industry support businesses) as required by Sect. 603 of the Act; 7) there is no *final RFA* that describes and estimates the number of small entities and the steps taken to minimize the significant economic impact on small entities as required by Sect. 604 of the Act; and 8) NMFS has not carried out the periodic review of its rules, which have or will have a significant economic impact upon a substantial number of small entities as required by Section 610 of the Act - there is no indication in the FMP and the proposed rule that this will be done going forward.

Response 15: This particular comment makes reference to several Executive Orders (E.O.s) as a basis for compliance with the RFA. The requirements of the mentioned E.O.s are not a pre-requisite to a determination on an action's compliance with the RFA. The thresholds for action on each of these requirements differ substantially, and there is no basis for arguing that an action fails to comply with the RFA on the grounds of any perceived relationship between it and an E.O. Further, NMFS has determined that it meets the requirements of all applicable E.O.s.

That being said, the analysis included in the amendment indicates that there are non-selected alternatives that would have imposed a more rigorous reduction schedule. However, these options were rejected on the basis of the greater economic impact on small entities, and the current 4-year phase-in was selected to ease economic dislocation while still achieving rebuilding. This option is consistent with the regulatory philosophy of E.O. 12866 and the separate requirements of the RFA. In any event, the RFA does not require that the least burdensome alternative be chosen. Rather, for an action for which an IRFA/FRFA was prepared, NMFS must describe the steps taken to minimize the economic impact on small entities consistent with the stated objectives of applicable statues, the reasons for selecting the alternative in the final rule, and the reasons why significant alternatives to the rule were rejected. An initial regulatory flexibility analysis was prepared. The analysis is presented in Section 8.3.6 of the FEIS. That analysis illustrates the economic impacts of and significant alternatives to the proposed action. That document was open for comment with the rule. NMFS is addressing comments received on the IRFA in this preamble to the final rule, has made revisions to the rule, and has prepared a FRFA. This rule contains a summary of the FRFA, as required by the RFA. Further, the action was found significant under E.O. 12866, primarily for the controversial and novel legal issues it raises.

Comment 16: A commenter stated that the measures discussed in the January 1998 public hearing document, pertaining to trip limits for scallop and multispecies vessels that also qualified for a monkfish limited access permit, were more lenient in the SFMA than the measures that were contained in the proposed rule. Since these later measures were more restrictive, the commenter feels that the measures should have been submitted to another public hearing process before publication of the proposed rule.

Response 16: The Monkfish Committee and the Councils considered the comments received during the public hearings when further revising the management measures in the Monkfish FMP. The public had ample opportunity during these subsequent Monkfish Committee and Council meetings to voice its concerns. The measures were further open to public comment for the period established by the NOA for the Monkfish FMP. These comments were considered prior to the FMP approval/disapproval process. Finally, the proposed rule also provided an opportunity for public comment on the measures.

Comment 17: A fishing company stated that the FMP understates dramatically the economic impact of the FMP, and estimates the impact to between 150 and 200 million dollars a year, not including the multiplier effect of the dollars in the community nor the impact on national trade. The economic statement treats the fishery as primarily a bycatch fishery and, the commenter stated, this is not the case.

Response 17: Historically, over 80 percent of the monkfish landings are made as bycatch from groundfish and scallop fishing. Recent directed effort, particularly by scallop and gillnet vessels and deeper water trawls, has lowered that percentage to 70 percent bycatch. However, the bulk of this fishery is still bycatch. The economic

impact analysis keeps in mind the fact that international markets determine U.S. domestic prices. Costs to the industry over the long term will be offset by increased net benefits and gross revenue. These estimated benefits are considered underestimated because the effect of the size limit and the rebuilt age structure will increase the proportion of larger, more valuable monkfish.

Comment 18: Several commenters noted that records were not required to be kept during the specified qualifying period which may cause many vessel owners who should be able to qualify to not qualify. They also stated that this is unfair to vessel owners (generally gillnetters catching whole monkfish for the Asian market) who entered the fishery late into the qualifying period or after the qualifying period ended.

Response 18: A notice of a ''control date'' for entry into the monkfish fishery was published in the **Federal Register** on February 27, 1995 (60 FR 10574), which described potential eligibility criteria for future access to that resource should a management regime be implemented to limit the number of participants in the fishery. The intent was to discourage new entries into this fishery based on economic speculation, which was of particular concern at that time due to the high price of monkfish livers to the Asian market. The announcement further gave the public notice that they should locate and preserve records that substantiate and verify their participation in the monkfish fishery.

Comment 19: A commenter stated that the lower trip limit for fixed, versus mobile, gear in the proposed rule is discriminatory toward the fixed gear sector and is in violation of national standard 4 relating to fairness and equality of the measures to fishers.

Response 19: The purpose of trip limits is to be fair and equitable to all fishers. They are designed to reflect each gear sector's historic level of participation in the fishery and approximate the customary monkfish bycatch of these vessels. Since the limits represent equivalent reductions for each gear sector to promote conservation, the limits have been determined to be consistent with national standard 4.

Comment 20: One industry group stated that the biomass-based overfishing definition is not authorized by the Magnuson-Stevens Act and that the proposed rule's biomass-based overfishing threshold is inexplicable in that it is much more restrictive than the already over-restrictive counterpart threshold in the FMP.

Response 20: In order to comply with the SFA and national standard 1 of the Magnuson-Stevens Act, an overfishing definition must, at a minimum, have an objective and measurable way to determine the status of a stock and the amount of fishing that should be specified. There are two types of determinants to satisfy this need: stock biomass and fishing mortality. These two should be compared with a maximum fishing mortality (F) threshold and a minimum biomass (B) threshold, which are chosen based on a stock's reproductive potential, and a determination made as to whether a stock is overfished (F is too high) or is in an overfished condition (B is too low). For some stocks, this threshold biomass level should be no less than the minimum stock size that could be rebuilt in 10 years or less to the biomass level that results in the maximum sustainable yield, if F was reduced to minimal practical levels. Thus, biomass, in the form of biomass targets, must be considered when attempting to achieve MSY on a continuing basis. In fact, it is the crux of the national standard 1 criteria and is, therefore, a critical component of any overfishing definition.

Comment 21: Two commenters questioned the length of the comment period on the proposed rule. Specifically, one asked how NMFS can approve the FMP 24 days before the close of comments on the rule, an apparent violation of the Magnuson-Stevens Act and the Administrative Procedure Act (APA). The FMP was approved on March 3, 1999, and the comment period for the proposed rule closed on March 26, 1999. Another stated that NMFS did not provide those directly impacted by the FMP with sufficient time to comment on it, nor the opportunity to comment on it or to inform the agency and the Secretary of issues prior to the FMP's approval.

Response 21: The Magnuson-Stevens Act, as amended in 1996, established independent review schedules for both the FMP and the implementing regulations. The NOA, published on December 2, 1998, for the monkfish FMP, established the beginning of the 60-day public review period for the FMP. The statutory date by which NMFS must approve, partially approve, or disapprove the FMP is 30 days after the end of the comment period on the FMP, regardless of when the proposed rule to implement the FMP is published. The proposed rule to implement the measures contained in the FMP had its own comment period. Under usual circumstances, the review of both elements will run more or less concurrently. In cases of extreme complexity or controversiality, the review schedules can become disconnected, as with this regulation. Consequently, the approval/disapproval date as specified under the Magnuson-Stevens Act arrived during the comment period for the regulations implementing the FMP. However, the Magnuson-Stevens Act requires that both the FMP and the regulations implementing it be consistent with the requirements specified in the Act. Consequently, the proposed rule is also reviewed for consistency. At the time of the publication of the proposed rule (February 16, 1999), NMFS had not yet made the determination that the FMP was consistent with the Magnuson-Steven Act. It did make that determination during the comment period on the proposed rule. Thus, the approval of the FMP separate from the final rule is not inconsistent with the Magnuson-Stevens Act or the APA.

Comment 22: An industry group requested that the Secretary order interim management measures consisting of (1) a limited access program as specified in the rule, (2) permit and reporting requirements as specified in the rule, (3) minimum fish sizes as specified in the rule, (4) area specific spawning closures, and (5) total allowable catch equal to the mean harvest of recent years to be controlled via DAS, or trip limits, or both.

Response 22: This final rule will implement the first three elements of the commenter's request in sufficient time to address conservation needs in this fishery, and, therefore, interim management measures are not necessary. The final two items are inconsistent with the approved FMP and are not considered to be necessary at this time. However, the rule implements a framework provision whereby actions such as these can be implemented. A framework action will allow for abbreviated rulemaking, while still allowing for public comment on the action.

Comment 23: One commenter noted that the OFDs specified in the proposed rule differed from that specified in the FMP. Specifically, the rule indicated a biomass threshold for the NFMA of 2.29 kg/tow and for the SFMA of 1.82 kg/tow, whereas the FMP specifies 1.45 kg/tow and 0.75 kg/tow, respectively.

Response 23: The proposed rule inadvertently labeled the biomass targets from the FMP as biomass thresholds. The text of the OFD, as included in the FMP, is the correct OFD for this FMP. Since the overfishing definition is not codified, the error is not corrected per se by this rule.

Further, future management actions will be based on the overfishing definition and associated levels as stated in the FMP, not as stated in the proposed rule.

Comment 24: One commenter remarked on the complexity of the proposed rule by stating that by incorporating the regulations for monkfish in the multispecies regulations, the Agency has significantly increased the complexity of regulations related to monkfish. The commenter concluded that it is plausible that the industry will be in violation without being aware that it is in violation.

Response 24: NMFS agrees that regulations are becoming increasingly complex and encourages people to obtain a copy of the regulations and become familiar with them. NMFS suggests that industry participants also contact the New England Fishery Management Council to request to be placed on its mailing list for news releases, which explain new regulations.

Comment 25: One of the industry's comment stated that mortality controls on fishing in other FMPs - closures, state restrictions, DAS, the buyback program, multispecies and scallop reporting mechanisms - all protect the harvest of monkfish, and are not reflected in the FMP.

Response 25: The monkfish FMP does consider other measures that may have had a direct or indirect impact on monkfish mortality, and NMFS recognizes that these measures contribute to the conservation of monkfish. Nevertheless, as documented in the FMP, these measures by themselves have not been sufficient to prevent overfishing and rebuild monkfish stocks consistent with Magnuson-Stevens Act's requirements.

Changes in the Final Rule From the Proposed Rule

Changes made are primarily related to technical and administrative needs and concerns and are made to clarify the intent of the regulations. These changes are listed below in the order that they appear in the regulations:

In § 648.4, paragraph (a)(9)(i)(H), a reference to § 648.4(a)(3)(i)(H) is corrected to read § 648.4(a)(1)(i)(H).

In § 648.7, paragraph (b)(1)(i) is revised. This paragraph in the proposed rule should have only added the requirement for vessel owners or operators to report monkfish on the daily fishing log reports. However, this paragraph inadvertently required only moratorium permitted vessels to maintain daily fishing log reports for all fishing trips. Under regulations implemented November 1, 1998 (64 FR 52639, October 1, 1998), the requirement contained in this paragraph applies to all Federally permitted vessels including party or charter vessels and is no longer limited to only moratorium permitted vessels. The change in the above final rule is consistent with current regulations.

In § 648.7, paragraph (b)(1)(iii), which references old reporting requirements for any party or charter vessel issued a Federal summer flounder or scup permit, other than a moratorium permit, is removed. The monkfish proposed rule inadvertently addressed the reporting requirements for charter and party vessels in (b)(1)(iii), which are now addressed in paragraph (b)(1)(i) of the above mentioned final rule.

In § 648.10, paragraph (c), a reference to § 648.4(a)(1)(i)(H)(*3*) is corrected to read § 648.4(a)(1)(i)(M)(*3*).

In § 648.10, paragraph (c), a reference to § 648.4(a)(9)(i)(J) is corrected to read § 648.4(a)(9)(i)(N)(*3*).

In § 648.10, paragraph (c)(5), which references § 648.94(b) and (c), is corrected to refer to § 648.94(c) only and is revised for clarity.

In § 648.14, paragraphs (y)(8) and (y)(11), which pertained to possession and trip limits and included consideration of the disapproved ''running clock'' provision, are revised and simplified.

In § 648.80, paragraphs (a)(4)(i)(A), (a)(7)(iv)(B), (a)(8)(i), (a)(9)(i)(D), and (b)(3)(ii), which pertain to the allowable incidental catch of monkfish and monkfish parts in the various exempted fisheries, are revised to clarify that the lesser of the allowable incidental catches heretofore specified and the incidental catches specified under the monkfish regulations applies.

In § 648.92, paragraph (b)(1) is revised to clarify that multispecies and scallop permit holders that also qualify for a monkfish limited access permit shall be allocated up to 40 monkfish DAS, depending on whether they have enough multispecies and/or scallop DAS to use concurrently with their monkfish DAS allocation as required by § 648.92(b)(2).

In § 648.92, paragraph (b)(5) is revised to clarify that spawning season restrictions will be implemented effective January 1, 2000.

In § 648.92, paragraph (b)(8)(ii) is revised to clarify that tagging requirements for gillnetters fishing for monkfish under a monkfish DAS will be implemented effective May 1, 2000.

In § 648.93, paragraph (a)(2) is revised to clarify that monkfish cheeks and livers are exempt from the requirement of having to have skin on while possessed on board and at the time of landing.

In § 648.94, paragraphs (b)(2)(vi)(A), (B), and (C), which pertain to landings in consideration of the disapproved ''running clock'' provision, are removed.

In § 648.94, paragraph (b)(2)(vi), which references the trip limit for cod and which reference does not apply because of the disapproval of the ''running clock'' provision, is revised and simplified.

In § 648.94, paragraph (b)(7) is added to clarify that a limited access scallop vessel fishing under a monkfish DAS (Category C and D) that is not using dredge gear and does not have dredge gear on board will be subject to the applicable trip limits specified at § 648.94(b)(1) and (b)(2). A vessel that has a Category C or D monkfish permit and a limited access sea scallop permit is prohibited from using dredge gear or possessing it on board during a monkfish DAS. Paragraph (b)(7) states explicitly what was implied in the proposed rule and is consistent with Section 4.6.3 of the Monkfish FMP.

In § 648.94, paragraph (e), which referenced transiting when exceeding the monkfish landing limit, which would have been in accordance with the disapproved ''running clock'' provision, is revised.

In § 648.96, paragraphs (a)(2) and (c)(1), which referenced the ''running clock'' provision, which is a disapproved provision, are revised.

In § 648.96, paragraphs (a)(4) and (c) are corrected, as requested by the NEFMC, by removing a requirement that documentation and analyses for a framework adjustment be made available at least two weeks before the first of the final two meetings, which would have been inconsistent with the framework adjustment procedures of both the Northeast Multispecies and Atlantic Scallop FMPs.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0202 for §§ 648.91 through 648.94, and § 648.96.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

NMFS has determined that the FMP that this rule implements is necessary for the conservation and management of

the monkfish fishery and is consistent with the national standards of the Magnuson-Stevens Act and other applicable law.

This action has been determined to be significant for the purposes of E.O. 12866.

The Council prepared an FEIS for the Monkfish FMP; an NOA was published on January 15, 1999 (64 FR 2639). This action is expected to have a significant impact on the human environment. NMFS determined upon review of the FMP/FEIS and public comments that approval and implementation of the Monkfish FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to halt overfishing and rebuild the monkfish stock; protect harbor porpoise; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of monkfish and groundfish resources.

In compliance with the Regulatory Flexibility Act, the Council prepared and NMFS adopted an IRFA contained in the FMP that describes the economic impacts of the proposed rule, if adopted, on small entities. The FRFA consists of the IRFA, public comments and responses thereto, the analysis of impacts and alternatives in the Monkfish FMP, and the summary that follows. The reasons for selecting the measures are set out in the preamble to this rule and in the Monkfish FMP.

The measures are restrictive, and impacts on the industry are expected to be considerable. In the early years of the program, some vessel owners may be unable to cover their operating costs, in part because of these restrictions and because of the poor condition of the stocks. Such vessel owners are expected to leave the fishery. Relative to the status quo, however, implementation of this FMP is expected to produce significant positive effects on a substantial number of small entities after stock abundance of monkfish recovers. The majority of the vessels in the monkfish fishery are considered small entities and, therefore, all alternatives and measures intended to mitigate adverse impacts on the fishing industry necessarily mitigate adverse impacts on small entities. Chief among the measures taken that minimizes the impacts on small entities, however, is the selection by the Council of the longest rebuilding period allowed by the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that overfishing be ended and the fishery rebuilt in the shortest time period as possible, not to exceed 10 years. The Council selected 10 years to lessen the impact on the fishing communities and minimize adverse impacts on small entities. For a discussion of other measures selected to mitigate impacts on small entities, see the comments on the FMP, proposed rule, and IRFA, which are summarized and responded to in the preamble.

The monkfish management measures will reduce the overall revenues of the monkfish fishery by approximately 50 to 54 percent in the first 3 years of the program compared to the status quo. Further reductions in catch are necessary in Year 4 to stop overfishing and allow rebuilding. These measures will also reduce overall revenues by 69 percent compared to the status quo.

The impact of these measures will not be uniform for all vessels or all sectors. Instead, the measures will have different effects on different gear groups, with vessels using gillnets and vessels fishing in the Mid-Atlantic being relatively more affected than other vessels. Due to the requirement and desirability to minimize regulatory discards, the catch reduction for vessels that qualify for a limited access monkfish permit are more severe than for vessels that target other species and land their monkfish incidental catch. Fishery sectors that rely more heavily on monkfish will, therefore, experience greater effects than other groups.

Projected revenues from fishing will be positive beginning in the year 2009, which will create demand for other goods and services in the area and lead to increased production and employment. The overall impacts will be positive. These measures are expected to increase net present value of gross revenues by $20 million over 20 years. Including the estimated cost savings is expected to produce an increase in net benefits to the nation of $38 million over a 20-year period. The negative effects of the non-selected alternatives would be greater than those of these selected measures.

The recreational sector is not expected to be negatively impacted by this action.

Alternatives Considered, but Rejected by the Councils

Alternatives 1, 2 and 4 were taken to public hearings in January 1997, as non-preferred alternatives. Due to the preponderance of public comment for (then) preferred Alternative 3 the Councils chose to continue development of Alternative 3 for inclusion in the FMP. Alternative 3, along with non-preferred Alternatives 3a and 3b, were taken to public hearings in January, 1998. See also Section 8.1.2.2.1. of the Monkfish FMP/EIS for rationale for the adoption of the preferred alternative. The alternatives are summarized below.

1. No Action - *Status quo*

See Volume I, Section 8.1.4.3 of the Monkfish FMP/EIS.

2. Non-preferred Alternative 1 - *Bycatch trip limits and quota-controlled limited access fishery*

See Volume I, Section 8.1.4.4.1 of the Monkfish FMP/EIS. Alternative 1 was rejected because quotas would not work well for many mixed-species fisheries that include monkfish and the proposed bycatch trip limits were anticipated to cause unacceptably high discarding. No positive comments were given at the 1997 public hearings.

3. Non-preferred Alternative 2 - *Mixed catch trip limits and quota-controlled limited access fishery*

See Volume I, Section 8.1.4.4.2 of the Monkfish FMP/EIS. Alternative 2 was an attempt to increase the bycatch trip limits and accommodate incidental catches of monkfish in fisheries that targeted a mixed catch where monkfish was a component. The Councils rejected Alternative 2 because it relied too heavily on trip limits to manage the fishery and had unacceptably low directed fishery quotas.

4. Non-preferred Alternative 4 - *Days-at-sea effort control*

See Volume I, Section 8.1.4.4.3 of the Monkfish FMP/EIS. Alternative 4 is a modification of DAS management proposed by Alternative 3, but with lower incidental catch allowances to boost the allocation of monkfish to the limited access fishery. The added allocation would enable the Councils to allocate some days to all vessels that qualify for monkfish limited access while meeting the mortality goals of the FMP. Some favorable comments for Alternative 4 were received at public hearings, but the overwhelming majority of people supported Alternative 3. The Councils ultimately rejected Alternative 4 because the DAS allocated to limited access vessels were too low and the bycatch trip limits would create unacceptable discarding.

5. Non-preferred Alternative 3a

See Volume I, Section 8.1.4.2.2 of the Monkfish FMP/EIS. This alternative is evaluated and analyzed in the EIS. Alternative 3a was expected to achieve similar mortality reductions to the preferred alternative, but discards were estimated to be higher in the NFMA and substantially higher in the SFMA.

6. Non-preferred Alternative 3b

See Volume I, Section 8.1.4.2.3 of the Monkfish FMP/EIS. This alternative is evaluated and analyzed in the EIS. Alternative 3b was expected to achieve similar mortality reductions to the

preferred alternative, but discards were estimated to be higher in the NFMA and substantially higher in the SFMA.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This rule contains 19 new collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

Limited access monkfish permits, including four new permit categories, OMB# 0648–0202, (30 minutes/ response). In subsequent years, permit renewal, OMB# 0648–0202, (15 minutes/response). Some applicants need to provide documentation of eligibility, OMB# 0648–0202, (1 hour/ response)

Monkfish incidental catch permits, OMB# 0648–0202, (30 minutes/ response). In subsequent years, permit renewal, OMB# 0648–0202, (15 minutes/response).

Permit appeals, OMB# 0648–0202, (180 minutes/response).

Vessel replacement, OMB# 0648–0202, (180 minutes/response).

Vessel upgrade, OMB# 0648–0202, (180 minutes/response).

Retention of vessel history, OMB# 0648–0202, (30 minutes/response).

Operator permit, OMB# 0648–0202, (60 minutes/response).

Dealer permit, OMB# 0648–0202, (5 minutes/response).

Dealer landing report, OMB# 0648–0202, (5 minutes/response(trip)).

Dealer employment report, OMB# 0648–0202, (2 minutes/response).

Gillnet designation–declaration into the gillnet fishing category, OMB# 0648–0202, (10 minutes/response).

Call-in, call-out (DAS reporting), OMB# 0648–0202, (2 minutes/ response).

Area declaration for identifying compliance with the differential size limit beginning May 1, 2000, OMB# 0648–0202, (3 minutes/ response).

Notification of transiting, OMB# 0648–0202, (1 minute/response if made with hail, 3 minutes/response if separate call).

Vessel trip reports, OMB# 0648–0202, (5 minutes/response).

Hail weight reports, OMB# 0648–0202, (3 minutes/response).

Net tagging requirements, OMB# 0648–0202, (1 minute to attach 1 tag, 2 minutes to notify of lost tags and request replacement).

Good Samaritan credits, OMB# 0648–0202, (30 minutes/response).

Declarations of blocks of time out of the fishery, OMB# 0648–0202, (3 minutes/response).

Public comment is sought regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

A formal section 7 consultation under the ESA was initiated for the Monkfish FMP based on information provided in the FEIS; a separate Biological Assessment that was submitted on September 23, 1998; Supplement 1 to the Monkfish FMP, which contains a revised RFA submitted on October 23, 1998; NMFS's proposed rule under the Magnuson-Stevens Act; NMFS entanglement data; and other relevant sources. In a biological opinion (BO) dated December 21, 1998, the Assistant Administrator for Fisheries, NMFS, determined that fishing activities conducted under the Monkfish FMP and its implementing regulations are not likely to jeopardize the continued existence of threatened or endangered species or designated critical habitat. The final rule is virtually identical to the measures analyzed in the December 21, 1998, BO and thus the BO is still applicable.

Potential adverse impacts to marine mammals resulting from fishing activities conducted under this FMP are discussed in the EIS, which focuses on potential impacts to harbor porpoise, right whales, and humpback whales. The monkfish sink gillnet fishery is subject to regulation under the harbor porpoise and large whale take reduction plans. The measures contained in the Harbor Porpoise and Large Whale Take Reduction Plans are expected to reduce the take of marine mammals in this fishery to acceptable levels within six months of plan implementation and to within levels approaching a zero mortality or serious injury rate within 5 years.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.91	–0202
648.92	–0202
648.93	–0202
648.94	–0202
648.96	–0202
* * * * *	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the

Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); and the Atlantic bluefish fishery (Atlantic Bluefish FMP). * * *

* * * * *

3. In § 648.2, the definitions for ''Monkfish or anglerfish'', ''Out of the multispecies fishery or DAS program'', and ''Tied up to the dock'' are removed; the definitions for ''Day(s)-at-Sea (DAS)'', ''Fishing year'', ''Prior to leaving port'', ''Sink gillnet or bottom-tending gillnet'', ''Upon returning to port'', and ''Vessel Monitoring System (VMS)'' are revised; and the definitions for ''Councils'', ''Monkfish'', ''Monkfish gillnets'', ''Monkfish Monitoring Committee'', ''Out of the monkfish fishery'', ''Out of the multispecies fishery'', and ''Tied up to the dock or tying up at a dock'' are added alphabetically to read as follows:

§ 648.2 Definitions.

* * * * *

Councils, with respect to the monkfish fishery, means the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

Day(s)-at-Sea (DAS), with respect to the NE multispecies and monkfish fisheries, and Atlantic sea scallop fishery, except as described in § 648.82(k)(1)(iv), means the 24-hour period of time or any part thereof during which a fishing vessel is absent from port to fish for, possess, or land, or fishes for, possesses, or lands, regulated species, monkfish, or scallops.

* * * * *

Fishing year means:

(1) For the Atlantic sea scallop fishery, from March 1 through the last day of February of the following year.

(2) For the NE multispecies and monkfish fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

Monkfish, also known as *anglerfish* or *goosefish*, means *Lophius americanus*.

Monkfish gillnets means gillnet gear with mesh size no smaller than 10–inches (25.4 cm) diamond mesh that is designed and used to fish for and catch monkfish while fishing under a monkfish DAS.

Monkfish Monitoring Committee means a team of scientific and technical staff appointed by the NEFMC and MAFMC to review, analyze, and recommend adjustments to the management measures. The team consists of staff from the NEFMC and the MAFMC, NMFS Northeast Regional Office, NEFSC, the USCG, two fishing industry representatives selected by their respective Council chairman (one from each management area with at least one of the two representing either the Atlantic sea scallop or northeast multispecies fishery), and staff from affected coastal states, appointed by the Atlantic States Marine Fisheries Commission. The Chair is elected by the Committee from within its ranks, subject to the approval of the Chairs of the NEFMC and MAFMC.

* * * * *

Out of the monkfish fishery means the period of time during which a vessel is not fishing for monkfish under the monkfish DAS program.

Out of the multispecies fishery means the period of time during which a vessel is not fishing for regulated species under the NE multispecies DAS program.

* * * * *

Prior to leaving port, with respect to the call-in notification system for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, means prior to the last dock or mooring in port from which a vessel departs to engage in fishing, including the transport of fish to another port.

* * * * *

Sink gillnet or *bottom-tending gillnet* means any gillnet, anchored or otherwise, that is designed to be, or is fished on or near, the bottom in the lower third of the water column.

* * * * *

Tied up to the dock or *tying up at a dock* means tied up at a dock, on a mooring, or elsewhere in a harbor.

* * * * *

Upon returning to port, means, for purposes of the call-in notification system for the NE multispecies and monkfish fisheries, upon first tying up at a dock at the end of a fishing trip.

* * * * *

Vessel Monitoring System (VMS) means a vessel monitoring system or VMS unit as set forth in § 648.9 and approved by NMFS for use by Atlantic sea scallop, NE multispecies, and monkfish vessels, as required by this part.

* * * * *

4. In § 648.4, paragraph (a)(9) is added to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(9) *Monkfish vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid monkfish permit to fish for, possess, or land any monkfish in or from the EEZ.

(i) *Limited access monkfish permits (effective November 8, 1999. (A) Eligibility*. A vessel may be issued a limited access monkfish permit if it meets any of the following limited access monkfish permits criteria:

(*1*) *Category A permit (vessels without multispecies or scallop limited access permits)*. The vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*2*) *Category B permit (vessels less than 51 gross registered tonnage (GRT) without multispecies or scallop limited access permits that do not qualify for a Category A permit)*. The vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995;

(*3*) *Category C permit (vessels with multispecies or scallop limited access permits)*. The vessel landed ≥50,000 lb (22,680 kg) tail-weight or 166,000 lb (75,297.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995; or

(*4*) *Category D permit (all vessels with multispecies limited access permits and vessels less than 51 GRT with scallop limited access permits that do not qualify for a Category C permit)*. The vessel landed ≥7,500 lb (3,402 kg) tail-weight or 24,900 lb (11,294.6 kg) whole weight of monkfish between February 28, 1991, and February 27, 1995.

(B) *Application/renewal restrictions*. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restrictions*. (*1*) See paragraph (a)(1)(i)(C) of this section.

(*2*) *Vessels under agreement for construction or under reconstruction*. A vessel may be issued a limited access monkfish permit if the vessel was under written agreement for construction or reconstruction between February 28, 1994, and February 27, 1995, and such vessel meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(D) *Change in ownership*. (*1*) See paragraph (a)(1)(i)(D) of this section.

(*2*) A vessel may be issued a limited access monkfish permit if it was under

written agreement for purchase as of February 27, 1995 and meets any of the qualification criteria regarding amount of landings as stated in paragraph (a)(9)(i)(A) of this section between February 28, 1991, and February 27, 1996.

(E) *Replacement vessels.* (*1*) See paragraph (a)(1)(i)(E) of this section.

(*2*) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(*2*) or (*4*) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(*3*) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(F) *Upgraded vessel.* (*1*) See paragraph (a)(1)(i)(F) of this section.

(*2*) A vessel ≥51 GRT that upgraded from a vessel size <51 GRT between February 27, 1995, and October 7, 1999, that meets any of the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraphs (a)(9)(i)(A)(*2*) and (*4*) of this section, may qualify for and fish under the permit category of the smaller vessel.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specification.* See paragraph (a)(1)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* A limited access monkfish permit may not be issued to a vessel or to its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Notification of eligibility for 1999.* (*1*) NMFS will attempt to notify all owners of vessels for which NMFS has credible evidence available that they meet the qualification criteria described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section and that they qualify for a limited access monkfish permit. Vessel owners must still apply within 12 months of the effective date of these regulations to complete the qualification requirements.

(*2*) If a vessel owner has not been notified that the vessel is eligible to be issued a limited access monkfish permit, and the vessel owner believes that there is credible evidence that the vessel does qualify under the pertinent criteria, the vessel owner may apply for a limited access monkfish permit within 12 months of the effective date of these regulations by submitting evidence that the vessel meets the requirements described in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section.

(N) *Appeal of denial of permit.* (*1*) Any applicant denied a limited access monkfish permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator erred in concluding that the vessel did not meet the criteria in paragraph (a)(9)(i)(A)(*1*), (*2*), (*3*), or (*4*) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Administrator's decision was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator. The hearing officer shall make a recommendation to the Regional Administrator. The Regional Administrator's decision on the appeal is the final decision of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* (*i*) A vessel denied a limited access monkfish permit may fish under the monkfish DAS program, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the monkfish DAS program. The Regional Administrator will issue such a letter for the pendency of any appeal, which decision is the final administrative action of the Department of Commerce pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. A vessel with such a letter of authorization shall not exceed the annual allocation of monkfish DAS as specified in § 648.92(b)(1) and must report the use of monkfish DAS according to the provisions of § 648.10(b) or (c), whichever applies. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter shall become invalid 5 days after receipt of the notice of denial. If the appeal is finally approved, any DAS used during pendency of the appeal shall be deducted from the vessel's annual allocation of monkfish DAS for that fishing year.

(*ii*) *Monkfish incidental catch permits effective November 8, 1999. A vessel of the United States that is subject to these regulations and that has not been issued a limited access monkfish permit is eligible for and may be issued a monkfish incidental catch permit to fish for, possess, or land monkfish subject to the restrictions in § 648.94(c).*

(ii) [Reserved]

* * * * *

5. In § 648.5, the first sentence of paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, or black sea bass, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section, and carry on board, a valid operator's permit.* * *

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, or black sea bass dealers, and surf clam and ocean quahog processors, must have been issued under this section, and have in their possession, a valid dealer and/or processor permit for these species.

* * * * *

7. In § 648.7, the first sentence of paragraph (a)(1)(i), the first sentence of paragraph (a)(3)(i), and paragraph (b)(1)(i) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for

trip from which fish are landed or received; dates of purchases; pounds by all species purchased (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. * * *

* * * * *

(3) * * *

(i) All NE multispecies or monkfish, sea scallop, summer flounder, mackerel, squid, and butterfish, scup, or black sea bass dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. * * *

* * * * *

(b) * * *

(1) * * *

(i) The owner or operator of any vessel issued a vessel permit for summer flounder, mackerel, squid, or butterfish, scup, or black sea bass, or a permit for sea scallops, or NE multispecies or monkfish, must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. At least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

* * * * *

8. In § 648.9, paragraph (d) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(d) *Presumption*. If a VMS unit fails to transmit an hourly signal of a vessel's position, the vessel shall be deemed to have incurred a DAS, or fraction thereof, for as long as the unit fails to transmit a signal, unless a preponderance of evidence shows that the failure to transmit was due to an unavoidable malfunction or disruption of the transmission that occurred while the vessel was declared out of the scallop fishery or NE multispecies or monkfish fishery, as applicable, or was not at sea.

* * * * *

9. In § 648.10, the first sentence of paragraph (b) introductory text, and paragraphs (b)(1), (c) introductory text, (c)(2), and (c)(5) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) *VMS Notification*. A multispecies vessel issued an Individual DAS or Combination Vessel permit, or scallop vessel issued a full-time or part-time limited access scallop permit, or scallop vessel fishing under the small dredge program specified in § 648.51(e), or a vessel issued a limited access multispecies or monkfish permit, or scallop permit, whose owner elects to fish under the VMS notification of paragraph (b) of this section, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b) or as modified in § 648.9(a). * * *

(1) Vessels that have crossed the VMS Demarcation Line specified under paragraph (a) of this section are deemed to be fishing under the DAS program, unless the vessel's owner or an authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port.

* * * * *

(c) *Call-in notification*. Owners of vessels issued limited access multispecies or monkfish permits who are participating in a DAS program and who are not required to provide notification using a VMS, scallop vessels qualifying for a DAS allocation under the occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, and vessels fishing pending an appeal as specified in § 648.4(a)(1)(i)(M)(*3*) and (a)(9)(i)(N)(*3*) are subject to the following requirements:

* * * * *

(2) The vessel's confirmation numbers for the current and immediately prior multispecies or monkfish fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access multispecies permit subject to the multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, and any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

* * * * *

10. In § 648.11, the first sentence of paragraph (a) and paragraph (e) introductory text are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel with a permit for sea scallops, or NE multispecies or monkfish, or mackerel, squid, or butterfish, or scup, or black sea bass, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. * * *

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

* * * * *

11. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General Provisions), B (Atlantic Mackerel, Squid, and Butterfish Fisheries), D (Atlantic Sea Scallop Fishery), E (Atlantic Surf Clam and Ocean Quahog Fisheries), F (NE Multispecies and Monkfish Fisheries), G (Summer Flounder Fishery), H (Scup Fishery), or I (Black Sea Bass Fishery) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that

subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, and butterfish, summer flounder, scup, and black sea bass fisheries.

* * * * *

12. In § 648.14, paragraphs (a)(49) and (103) are revised, and paragraphs (x)(8) and (y) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(49) Violate any of the possession or landing restrictions on fishing with scallop dredge gear specified in §§ 648.80(h) and 648.94.

* * * * *

(103) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than solely for transport, any multispecies or monkfish, unless the dealer or transferee has a dealer permit issued under § 648.6.

* * * * *

(x) * * *

(8) *Monkfish*. All monkfish retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

(y) In addition to the general prohibitions specified in

§ 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a limited access monkfish permit to do any of the following:

(1) Fish for, possess, retain or land monkfish, unless:

(i) The monkfish are being fished for or were harvested in or from the EEZ by a vessel issued a valid monkfish permit under this part and the operator on board such vessel has been issued an operator permit that is on board the vessel; or

(ii) The monkfish were harvested by a vessel not issued a monkfish permit that fishes for monkfish exclusively in state waters; or

(iii) The monkfish were harvested in or from the EEZ by a vessel engaged in recreational fishing.

(2) Land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, monkfish from one vessel to another vessel, unless each vessel has not been issued a monkfish permit and fishes exclusively in state waters.

(3) Sell, barter, trade, or otherwise transfer, or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, any monkfish, unless the vessel has been issued a monkfish permit, or unless the monkfish were harvested by a vessel with no monkfish permit that fishes for monkfish exclusively in state waters.

(4) Fish for, possess, retain, or land monkfish, or operate or act as an operator of a vessel fishing for or possessing monkfish in or from the EEZ without having been issued and possessing a valid operator permit.

(5) Fish with, use, or have on board, while fishing under a monkfish DAS within the Northern Fishery Management Area or Southern Fishery Management Area as described in § 648.91(a) and (b), nets with mesh size smaller than the minimum mesh size specified in § 648.91(c).

(6) Violate any provision of the incidental catch permit restrictions as provided in §§ 648.4(a)(9)(ii) and 648.94(c).

(7) Possess, land, or fish for monkfish while in possession of dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, except for vessels with no monkfish permit that fish for monkfish exclusively in state waters.

(8) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, monkfish in excess of the possession or trip limits specified in § 648.94 as is applicable to a vessel issued a monkfish limited access or incidental catch permit.

(9) Fail to comply with the monkfish size limit restrictions of § 648.93.

(10) Fail to comply with the monkfish liver landing restrictions of § 648.94(d).

(11) Fish for, possess or land monkfish as specified in § 648.94 or when not participating in the monkfish DAS program pursuant to § 648.92.

(12) If carrying a VMS unit under § 648.10:

(i) Fail to have a certified, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times.

(ii) Fail to comply with the notification, replacement, or any other requirements regarding VMS usage as specified in § 648.10.

(13) Combine, transfer, or consolidate DAS allocations.

(14) Fish for, possess, or land monkfish with or from a vessel that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(15) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(E) and (F).

(16) Fail to comply with any provision of the DAS notification program as specified in § 648.10.

(17) If the vessel has been issued a limited access monkfish permit and fishes under a monkfish DAS, fail to comply with gillnet requirements and restrictions specified in § 648.92(b)(8).

(18) If the vessel is fishing under the gillnet category, fail to comply with the applicable restrictions and requirements specified in § 648.92(b)(8).

(19) Fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(20) Tag a gillnet or use a gillnet tag that has been reported lost, missing, destroyed, or issued to another vessel, or use a false gillnet tag.

(21) Sell, transfer, or give away gillnet tags that have been reported lost, missing, destroyed, or issued to another vessel.

13. Revise the heading for subpart F to read as follows:

Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries

14. In § 648.80, the section heading, paragraphs (a)(4)(i)(A), (a)(7)(iv)(B), (a)(8)(i), (a)(9)(i)(D), and (b)(3)(ii) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Administrator on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

* * * * *

(7) * * *

(iv) * * *

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species

on board or as specified by § 648.94(c)(3),(4),(5) or (6), as applicable, whichever is less.

* * * * *

(8) * * *

(i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(8)(iv) or (a)(3)(ii) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) and (a)(8)(iii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502)):

Small Mesh Area 1

Point	N. lat.	W. long.
SM1	43 deg.03'	70 deg.27'
SM2	42 deg.57'	70 deg.22'
SM3	42 deg.47'	70 deg.32'
SM4	42 deg.45'	70 deg.29'
SM5	42 deg.43'	70 deg.32'
SM6	42 deg.44'	70 deg.39'
SM7	42 deg.49'	70 deg.43'
SM8	42 deg.50'	70 deg.41'
SM9	42 deg.53'	70 deg.43'
SM10	42 deg.55'	70 deg.40'
SM11	42 deg.59'	70 deg.32'
SM1	43 deg.03'	70 deg.27'
SM13	43 deg.05.6'	69 deg.55.0'
SM14	43 deg.10.1'	69 deg.43.3'
SM15	42 deg.49.5'	69 deg.40.0'
SM16	42 deg.41.5'	69 deg.40.0'
SM17	42 deg.36.6'	69 deg.55.0'
SM13	43 deg.05.6'	69 deg.55.0'

* * * * *

(9) * * *

(i) * * *

(D) The following species may be retained, with the restrictions noted, as allowable bycatch species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to two standard totes; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

(b) * * *

(3) * * *

(ii) *Possession and net stowage requirements*. Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (b)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (b)(2)(i) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea ravens; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10 percent, by weight, of all other species on board.

* * * * *

15. Revise the heading of § 648.81 to read as follows:

§ 648.81 Multispecies closed areas.

16. Revise the heading of § 648.82 to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

17. Revise the heading of § 648.83 to read as follows:

§ 648.83 Multispecies minimum fish sizes.

18. In § 648.84, paragraph (a) is revised to read as follows:

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

* * * * *

19. Revise the heading of § 648.86 to read as follows:

§ 648.86 Multispecies possession restrictions.

20. Revise the heading of § 648.88 to read as follows:

§ 648.88 Multispecies open access permit restrictions.

21. In § 648.90, the section heading and paragraph (c) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

* * * * *

(c) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

22. Section 648.95 is added and reserved, §§ 648.91 through 648.94, and § 648.96 are added to subpart F to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

All vessels fishing for, possessing or landing monkfish must comply with the following minimum mesh size, gear, and methods of fishing requirements, unless otherwise exempted or prohibited:

(a) *Northern Fishery Management Area (NFMA)— Area definition*. The NFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at the intersection of 70° W. longitude and the south-facing shoreline of Cape Cod, MA (point A), then southward along 70° W. longitude to 41° N. latitude, then eastward to the U.S.-Canada maritime boundary, then in a northerly direction along the U.S.-Canada maritime boundary until it intersects the Maine shoreline, and then following the

coastline in a southerly direction until it intersects with point A.

(b) *Southern Fishery Management Area (SFMA)— Area definition.* The SFMA (copies of a chart depicting the area are available from the Regional Administrator upon request) is that area defined by a line beginning at point A, then in a southerly direction to the NC-SC border, then due east to the 200–mile limit, then in a northerly direction along the 200–mile limit to the U.S.-Canada maritime boundary, then in a northwesterly direction along the U.S.-Canada maritime boundary to 41° N. latitude, and then westward to 70° W. longitude, and finally north to the shoreline at Cape Cod, MA (point A).

(c) *Gear restrictions*—(1) *Minimum mesh size*—(i) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(ii) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4 cm) square or 12–inch (30.5 cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified by § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i) of the Northeast multispecies regulations, depending upon and consistent with the multispecies regulated mesh area being fished.

(ii) *Trawl nets while on a monkfish and multispecies DAS.* For vessels issued a Category C or D limited access monkfish permit and fishing with trawl gear under both a monkfish *and* multispecies DAS, the minimum mesh size is that allowed under regulations governing mesh size for the NE Multispecies FMP at § 648.80(a)(2)(i), (b)(2)(i), or (c)(2)(i), depending upon and consistent with the multispecies regulated mesh area being fished.

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10–inches (25.4 cm) diamond mesh.

(iv) *Authorized gear while on a monkfish and scallop DAS.* Vessels issued a Category C or D limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(i) of this section.

(2) *Other gear restrictions.* (i) A vessel may not fish with dredges or have dredges on board while fishing under a monkfish DAS.

(ii) All other non-conforming gear must be stowed as specified in § 648.81(e).

(iii) The mesh size restrictions in paragraph (c)(1) of this section do not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 ft^2 (0.81 m^2)).

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) *General.* A vessel issued a limited access monkfish permit may not fish for, possess, retain, or land monkfish, except during a DAS as allocated under and in accordance with the applicable DAS program described in this section, except as otherwise provided in this part.

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

(2) [Reserved]

(b) *Monkfish DAS program—permit categories and allocations*—(1) *Limited access monkfish permit holders.* For fishing years 1999, 2000, and 2001, all limited access monkfish permit holders shall be allocated 40 monkfish DAS for each fishing year. Multispecies and scallop limited access permit holders who also qualify for a limited access monkfish permit shall be allocated up to 40 monkfish DAS for each fishing year, depending on whether they have sufficient multispecies and/or scallop DAS to use concurrently with their monkfish DAS, as required by paragraph (b)(2) of this section. For fishing years 2002 and thereafter, no monkfish DAS will be allocated to any limited access monkfish permit holder.

(2) *Category C and D limited access monkfish permit holders.* Each monkfish DAS used by a limited access multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a multispecies or scallop DAS, as applicable.

(3) *Accrual of DAS.* Same as § 648.53(e).

(4) *Good Samaritan credit.* Same as § 648.53(f).

(5) *Spawning season restrictions.* Beginning January 1, 2000, a vessel issued a valid Category A or B limited access monkfish permit under § 648.4(a)(9)(i)(A)(*1*) or (a)(9)(i)(A)(*2*) must declare and be out of the monkfish DAS program, as described in paragraph (b) of this section, for a continuous 20-day period between April 1 and June 30 of each calendar year using the notification requirements specified in § 648.10. If a vessel owner has not declared and been out for a continuous 20-day period between April 1 and June 30 of each calendar year on or before June 11 of each year, the vessel is prohibited from fishing for possessing or landing any monkfish during the period June 11 through June 30, inclusive.

(6) *Declaring monkfish DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the monkfish DAS program and declaration of its continuous 20-day period out of the monkfish DAS program, using the notification requirements specified in § 648.10.

(7) *Adjustments in annual monkfish DAS allocations.* Adjustments in annual monkfish DAS allocations, if required to meet fishing mortality goals, may be implemented pursuant to the framework adjustment procedures of § 648.96.

(8) *Gillnet restrictions*—(i) *Number and size of nets.* A vessel issued a monkfish limited access permit or fishing under a monkfish DAS may not fish with, haul, possess, or deploy more than 160 gillnets. A vessel issued a multispecies limited access permit and a limited access monkfish permit, or fishing under a monkfish DAS, may fish any combination of monkfish, roundfish, and flatfish gillnets, up to 160 nets total, provided that the number of monkfish, roundfish, and flatfish gillnets is consistent with the limitations of § 648.82(k)(1)(i) and that the nets are tagged in accordance with the regulations, as specified in § 648.82. Nets may not be longer than 300 ft (91.44 m), or 50 fathoms, in length.

(ii) *Tagging requirements.* Beginning May 1, 2000, all gillnets fished, hauled, possessed, or deployed by a vessel fishing for monkfish under a monkfish DAS must have one monkfish tag per net, with one tag secured to every other bridle of every net within a string of nets. Tags must be obtained as described in § 648.4. A vessel operator must account for all net tags upon request by an authorized officer.

(iii) *Lost tags.* A vessel owner or operator must report lost, destroyed, or missing tag numbers by letter or fax to the Regional Administrator within 24 hours after tags have been discovered lost, destroyed, or missing.

(iv) *Replacement tags.* A vessel owner or operator seeking replacement of lost, destroyed, or missing tags must request replacement tags by letter or fax to the Regional Administrator. A check for the

cost of the replacement tags must be received before the tags will be re-issued.

(v) *Method of counting DAS.* A vessel fishing with gillnet gear under a monkfish DAS will accrue 15 hours monkfish DAS for each trip greater than 3 hours but less than or equal to 15 hours. Such vessel will accrue actual monkfish DAS time at sea for trips less than or equal to 3 hours or greater than 15 hours. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided that the vessel complies with the requirements and conditions of paragraphs (b)(8)(i), (ii), (iii), (iv), and (v) of this section.

§ 648.93 Monkfish minimum fish sizes.

(a) *Minimum fish sizes.* (1) All monkfish caught in or from the EEZ or by vessels issued a Federal monkfish permit must meet the following minimum fish size requirements (total length and tail length) unless such minimum fish sizes are adjusted pursuant to paragraph (b) of this section:

MINIMUM FISH SIZES

(Total Length/Tail Length)

Total Length	Tail Length
17 inches (43.2 cm)	11 inches (27.9 cm)

(2) The minimum fish size applies to the whole fish (total length) or to the tail of a fish (tail length) at the time of landing. Fish or parts of fish, with the exception of cheeks and livers, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or fish parts possessed. Monkfish tails are measured from the anterior portion of the fourth cephalic dorsal spine to the end of the caudal fin. Any tissue anterior to the fourth dorsal spine is ignored. If the fourth dorsal spine or the tail is not intact, the minimum size is measured between the most anterior vertebra and the most posterior portion of the tail.

(b) *Adjustments*—(1) *Vessels fishing in the SFMA.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(1)(ii), beginning on May 1, 2000, the minimum fish size limit for vessels fishing in the SFMA, or for vessels not declared into the NFMA, is 21 inches (53.3 cm) total length/14 inches (35.6 cm) tail length.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, a notification will be published in the **Federal Register** specifying the minimum monkfish size limit of 17 inches (43.2 cm) total length/11 inches (27.9 cm) tail length for vessels fishing for, catching, or landing monkfish in the SFMA.

(2) *Vessels fishing in the NFMA.* An adjustment to the minimum size possession limits for vessels fishing for, catching, or landing fish in the SFMA under paragraph (b)(1) of this section will not affect the minimum size possession limits for vessels fishing for or landing monkfish in the NFMA, which will remain as described in paragraph (a)(1) of this section. If the size limits specified in paragraph (b)(1) of this section become effective for the SFMA, a vessel intending to fish for and catch monkfish under a monkfish DAS only in the NFMA must declare into that area for a period not less than 30 days when calling in under the DAS program or as otherwise directed by the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. Such restrictions shall apply to the entire trip. A vessel that has declared into the NFMA may transit the SFMA providing that it complies with the transiting and gear storage provisions described in § 648.94(e) and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

§ 648.94 Monkfish possession and landing restrictions.

(a) *General.* Monkfish may be possessed or landed either as tails only, or in whole form, or any combination of the two. When both tails and whole fish are possessed or landed, the possession or landing limit for monkfish tails shall be the difference between the whole weight limit minus the landing of whole monkfish, divided by 3.32. A 996 lb (452 kg) whole weight trip limit and a 600 lb (272 kg) landing of whole fish shall, for example, allow for a maximum landing of tails of 119.3 lb (54.1 kg).

(b) *Vessels issued limited access monkfish permits*—(1) *Vessels fishing under the monkfish DAS program prior to May 1, 2000.* For vessels fishing under the monkfish DAS program prior to May 1, 2000, there is no monkfish trip limit.

(2) *Vessels fishing under the monkfish DAS program May 1, 2000, and thereafter.* (i) Unless the Regional Administrator makes the determination specified in paragraph (b)(2)(ii), the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section apply to vessels fishing under the monkfish DAS program in the SFMA.

(ii) If, based on landings, projected landings, and other available data, the Regional Administrator determines that the SFMA monkfish catch for the period May 1, 1999, through April 30, 2000, is less than or equal to the Year 1 SFMA TAC, no monkfish trip limit shall apply to a vessel that is fishing under a monkfish DAS. Such determination shall be published in the **Federal Register**.

(iii) *Category A and C vessels using trawl gear.* Category A and C vessels exclusively using trawl gear during a monkfish DAS may land up to 1,500 lb (680 kg) tail-weight or 4,980 lb (2,259 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(iv) *Category B and D vessels using trawl gear.* Category B and D vessels using exclusively trawl gear during a monkfish DAS may land up to 1,000 lb (454 kg) tail-weight or 3,320 lb (1,506 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(v) *Vessels using gear other than trawl gear.* Any vessel issued a limited access monkfish permit and using gear other than trawl gear during a monkfish DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(vi) *Administration of landing limits.* A vessel owner or operator may not exceed the monkfish trip limits as specified in paragraphs (b)(2)(iii), (iv), and (v) of this section per monkfish DAS fished, or any part of a monkfish DAS fished.

(3) *Category C and D vessels fishing during a multispecies DAS prior to May 1, 2002*—(i) *NFMA.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a multispecies DAS exclusively in the NFMA.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS, and not under a monkfish DAS, in the SFMA, the vessel may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS if

trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

(4) *Category C and D vessels fishing during a multispecies DAS from May 1, 2002, and thereafter*—(i) *NFMA.* Any Category C or D vessel that is fishing under a multispecies DAS in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of a trip is fished only under a multispecies DAS and not under a monkfish DAS in the SFMA, a vessel issued a Category C or D permit may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS, or 25 percent of the total weight of fish on board, whichever is less, if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight if gear other than trawl gear is used during the trip.

(5) *Category C and D vessels fishing under the scallop DAS program prior to May 1, 2002.* A category C or D vessel fishing under a scallop DAS with a dredge on board, or under a net exemption provision as specified at § 648.51(f), may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(6) *Category C and D vessels fishing under the scallop DAS program from May 1, 2002, and thereafter.* A category C or D vessel fishing under a scallop DAS with a dredge on board may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(7) *Category C and D Scallop Vessels Declared into the Monkfish DAS Program without a Dredge on Board.* Category C and D vessels that have declared into the Monkfish DAS Program and that do not fish with or have on board a dredge are subject to the same possession limits as specified at (b)(1) and (b)(2). Such vessels are also subject to provisions applicable to Category A and B vessels fishing only under a monkfish DAS, consistent with the provisions of this part.

(c) *Vessels issued a monkfish incidental catch permit*—(1) *Vessels fishing under a multispecies DAS*—(i) *NFMA.* Vessels issued a monkfish incidental catch permit fishing under a multispecies DAS exclusively in the NFMA may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor), or 25 percent of the total weight of fish on board, whichever is less.

(ii) *SFMA.* If any portion of the trip is fished by a vessel issued a monkfish incidental catch permit under a multispecies DAS in the SFMA, the vessel may land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(2) *Scallop dredge vessels fishing under a scallop DAS*—(i) P*rior to May 1, 2002.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 300 lb (136 kg) tail-weight or 996 lb (452 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(ii) *From May 1, 2002, and thereafter.* A scallop dredge vessel issued a monkfish incidental catch permit fishing under a scallop DAS may land up to 200 lb (91 kg) tail-weight or 664 lb (301 kg) whole weight of monkfish per DAS (or any prorated combination of tail-weight and whole weight based on the conversion factor).

(3) *Vessels not fishing under a monkfish, multispecies or scallop DAS*—(i) *Vessels fishing in the GOM/GB, SNE and MA Regulated Mesh Areas with large mesh.* A vessel issued a valid monkfish incidental catch permit and fishing in the GOM/GB or SNE RMAs with large mesh as defined in § 648.80(a)(2)(i) and (b)(2)(i), respectively, or fishing in the MA RMA with mesh no smaller than specified at § 648.104(a)(1), while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent of the total weight of fish on board.

(ii) [Reserved]

(4) *Vessels fishing with small mesh.* A vessel issued a valid monkfish incidental catch permit and fishing with mesh smaller than the mesh size specified by area in paragraph (c)(3) of this section, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land only up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip.

(5) *Small vessels.* A vessel issued a limited access multispecies permit and a valid monkfish incidental catch permit that is ≤ 30 feet (9.1 m) in length and that elects not to fish under the multispecies DAS program may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(6) *Vessels fishing with handgear.* A vessel issued a valid monkfish incidental catch permit and fishing exclusively with rod and reel or handlines with no other fishing gear on board, while not on a monkfish, multispecies, or scallop DAS, may possess, retain, and land up to 50 lb (23 kg) tail-weight or 166 lb (75 kg) whole weight of monkfish per trip, regardless of the weight of other fish on board.

(d) *Monkfish liver landing restrictions.* (1) A vessel authorized to land monkfish under this part may possess or land monkfish livers up to 25 percent of the tail-weight of monkfish, or up to 10 percent of the whole weight of monkfish, per trip, except as provided under paragraph (d)(2) of this section.

(2) If a vessel possesses or lands both monkfish tails and whole monkfish, the vessel may land monkfish livers up to 10 percent of the whole weight of monkfish per trip using the following weight ratio:

(0.10) x [(tail weight x 3.32) + (whole fish x 1)]

Note to paragraph (d)(2): The value 3.32 is the live weight conversion for tails and the value of 1 is the live weight conversion for fish landed in a whole condition.

(e) *Transiting.* A vessel that has declared into the NFMA for the purpose of fishing for monkfish, or a vessel that is subject to less restrictive measures in the NFMA, may transit the SFMA, provided that the vessel does not harvest or possess monkfish from the SFMA and that the vessel's fishing gear is properly stowed and not available for immediate use in accordance with § 648.81(e).

(f) *Area declaration.* Should the trip limits specified in paragraphs (b)(2)(iii), (iv), (v), and (vi) of this section be implemented under paragraph (b)(2) of this section, a vessel, in order to fish for monkfish under a monkfish DAS in the NFMA, must declare into that area for a period of not less than 30 days. A vessel that has not declared into the NFMA under this paragraph will be presumed to have fished in the SFMA under the more restrictive requirements of that area. Such restrictions will apply to the entire trip. A vessel that has declared its intent to fish in the NFMA may transit the SFMA, provided that it complies with the transiting provisions

described in paragraph (e) of this section.

(g) *Other landing restrictions.* Vessels are subject to any other applicable landing restrictions of this part.

§ 648.95 [Reserved]

§ 648.96 Monkfish framework specifications.

(a) *Annual review.* The Monkfish Monitoring Committee (MFMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and options for NEFMC and MAFMC consideration on any changes, adjustment, or additions to DAS allocations, trip limits, size limits, or other measures necessary to achieve the Monkfish FMP's goals and objectives.

(1) The MFMC shall review available data pertaining to discards and landings, DAS, and other measures of fishing effort; stock status and fishing mortality rates; enforcement of and compliance with management measures; and any other relevant information.

(2) Based on this review, the MFMC shall recommend target TACs and develop options necessary to achieve the Monkfish FMP's goals and objectives, which may include a preferred option. The MFMC must demonstrate through analysis and documentation that the options it develops are expected to meet the Monkfish FMP goals and objectives. The MFMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MFMC may include any of the management measures in the Monkfish FMP, including, but not limited to: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(3) The Councils shall review the recommended target TACs and all of the options developed by the MFMC and other relevant information, consider public comment, and develop a recommendation to meet the Monkfish FMP's objectives, consistent with other applicable law. The Councils may delegate authority to the Joint Monkfish Oversight Committee to conduct an initial review of the options developed by the MFMC. The oversight committee would review the options developed by the MFMC and any other relevant information, consider public comment, and make a recommendation to the Councils. If the Councils do not submit a recommendation that meets the Monkfish FMP's objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC unless rejected by either Council, provided such option meets the Monkfish FMP's objectives and is consistent with other applicable law. If either the NEFMC or MAFMC has rejected all options, then the Regional Administrator may select any measure that has not been rejected by both Councils.

(4) Based on this review, the Councils shall submit a recommendation to the Regional Administrator of any changes, adjustments, or additions to management measures necessary to achieve the Monkfish FMP's goals and objectives. The Councils' recommendation shall include supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Councils. Management adjustments or amendments for monkfish require majority approval of each Council for submission to the Secretary.

(5) If the Councils submit, on or before January 7 of each year, a recommendation to the Regional Administrator after one framework meeting, and the Regional Administrator concurs with the recommendation, the recommendation shall be published in the **Federal Register** as a proposed rule. The **Federal Register** notification of the proposed action shall provide a 30-day public comment period. The Councils may instead submit their recommendation on or before February 1 if they choose to follow the framework process outlined in paragraph (c) of this section and request that the Regional Administrator publish the recommendation as a final rule. If the Regional Administrator concurs that the Councils' recommendation meets the Monkfish FMP's objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action shall be published as a final rule in the **Federal Register**. If the Regional Administrator concurs that the recommendation meets the Monkfish FMP's objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year, fishing may continue. However, DAS used by a vessel on or after the start of a fishing year shall be counted against any DAS allocation the vessel ultimately receives for that year.

(6) If the Regional Administrator concurs in the Councils' recommendation, a final rule will be published in the **Federal Register** prior to each fishing year. If the Councils fail to submit a recommendation to the Regional Administrator by February 1 that meets the Monkfish FMP's goals and objectives, the Regional Administrator may publish as a proposed rule one of the MFMC options reviewed and not rejected by either Council, provided that the option meets the Monkfish FMP's objectives and is consistent with other applicable law. If the Councils fail to submit a recommendation that meets the objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MFMC, unless it was rejected by either the New England or Mid-Atlantic Council, provided the option meets the objective and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action shall be published as a final rule in the **Federal Register**.

(b) *Three-year review of biological objectives and reference points.* The MFMC shall meet on or before November 15, 2001, to evaluate threshold and target biological reference points. If adjustments are required, a framework action shall be initiated to replace the existing (''default'') measures scheduled to take effect on May 1, 2002 (Year 4). The framework process shall include a comprehensive evaluation, conducted by the MFMC during 2001, of the effectiveness of the management measures to reduce mortality below the overfishing threshold and allow rebuilding within (at that time) 6 years. If a change is required, the framework process shall follow the procedure described in paragraph (a) of this section, but may also include an adjustment of the overfishing definition.

(c) *Within season management action.* Either Council, or the joint Monkfish Oversight Committee (subject to the approval of the Councils chairmen), may at any time initiate action to add or adjust management measures if it is determined that action is necessary to meet or be consistent with the goals and objectives of the Monkfish FMP.

Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. Management adjustments or amendments for monkfish shall require majority approval of each Council for submission to the Secretary.

(1) *Adjustment process.* After a management action has been initiated, the Councils must develop and analyze appropriate management actions over the span of at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: closed seasons or closed areas; minimum size limits; mesh size limits; net limits; liver to monkfish landings ratios; annual monkfish DAS allocations and monitoring; trip or possession limits; blocks of time out of the fishery; gear restrictions; transferability of permits and permit rights or administration of vessel upgrades, vessel replacement, or permit assignment; and other frameworkable measures included in §§ 648.55 and 648.90.

(2) *Adjustment process for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

(3) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Action by NMFS.* If the Councils' recommendation to NMFS includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3) of this section, then the measures shall be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(d) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

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Federal Register

Thursday
October 7, 1999

Part III

The President

Proclamation 7231—Fire Prevention Week, 1999

Proclamation 7232—Child Health Day, 1999

Federal Register
Vol. 64, No. 194
Thursday, October 7, 1999

Presidential Documents

Title 3—

The President

Proclamation 7231 of October 1, 1999

Fire Prevention Week, 1999

By the President of the United States of America

A Proclamation

Of the many disasters that affect our communities in a given year, fire is one that Americans can actually prevent; and, through early warning and appropriate response, we can minimize the havoc fire wreaks when it does occur. In 1998, U.S. fire departments responded to nearly 1.8 million fires, with three-quarters of them occurring in residences. Fire cost our Nation some $8.6 billion in property loss last year, and it took a staggering human toll: more than 4,000 civilians died, and 91 firefighters lost their lives in the line of duty.

The place where Americans feel safest—at home—is the very place where we are at greatest risk from fire. Eighty percent of all U.S. fire deaths occur at home. If Americans knew more about fire prevention and better understood how to react quickly and sensibly when fire breaks out, we could greatly reduce such deaths.

Because knowledge of simple fire safety precautions is so vital to saving lives, the National Fire Protection Association (NFPA) launched a 3-year initiative to teach the importance of planning and practicing how to escape from fire. In partnership with the Federal Emergency Management Agency, through its United States Fire Administration, and our Nation's fire services, NFPA has again selected, ''Fire Drills: The Great Escape!'' as the theme of this year's Fire Prevention Week.

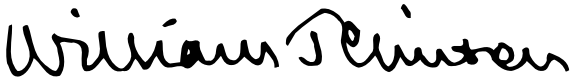
Fire spreads quickly, making a fast response essential to survival. I urge every family to develop a home fire escape plan and to practice it at least twice a year. The elements of a good plan include installing working smoke alarms on every level of the home, establishing two ways out of each room, and establishing a meeting place outside the home.

Each of us can take these simple steps to plan and practice our own ''great escape'' from fire and significantly improve our chance of survival if fire occurs. By doing so, we can pay fitting tribute to the selfless service of our Nation's firefighters. The extraordinary personal sacrifice made by firefighters throughout America, and the dedication of all men and women who serve in our Nation's fire services, will be honored on Sunday, October 10, 1999, at the National Fallen Firefighters Memorial Service in Emmitsburg, Maryland.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 3 through October 9, 1999, as Fire Prevention Week. I encourage the people of the United States to take an active role in fire prevention not only during this week, but also throughout the year. I also call upon every citizen to pay tribute to the members of our fire and emergency services who have lost their lives or been injured in service to their communities, and to those men and women who carry on their noble tradition.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-nine, and

of the Independence of the United States of America the two hundred and twenty-fourth.



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Presidential Documents

Proclamation 7232 of October 1, 1999

Child Health Day, 1999

By the President of the United States of America

A Proclamation

As America's children begin their exciting journey into the 21st century, one of the greatest gifts we can give them is a healthy start; and we should recognize that the well-being of our young people includes both their physical and mental health.

We have already made great strides in addressing children's physical health care needs through the Children's Health Insurance Program (CHIP), which funds State efforts to provide affordable health insurance to millions of uninsured children. Sadly, however, as many as one in ten American children and adolescents today may have behavioral or mental health problems; and parents, teachers, and health care professionals need to realize that even very young children can experience serious clinical depression. The majority of children who commit suicide are profoundly depressed, and the majority of parents whose children took their own lives did not recognize that depression until it was too late.

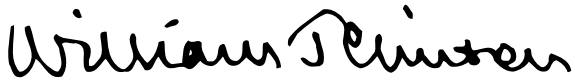
My Administration is working to increase children's access to mental health care and to help communities expand counseling, mentoring, and mental health services in our schools. In addition, we fought to ensure that funding for CHIP contains a strong mental health benefits component. While there is no substitute for parents becoming and remaining involved in their children's lives, we must give families the tools they need to meet the challenges they face.

Perhaps the most vital step we can take to ensure that every child reaches his or her full potential is to fight the stigma that prevents so many Americans with mental illness from making the most of their lives. In June of this year, under the leadership of Tipper Gore, we convened the first-ever White House Conference on Mental Health, where, among other important issues, we discussed how to reach out to troubled young people and put them on the path to mental and emotional health. The first and most crucial effort we can make is to talk honestly about mental illness and begin to dispel the myths that surround it. I am pleased that the Surgeon General and Mrs. Gore have committed to a major new campaign with these goals in mind. With powerful public service announcements and strong partners in the private sector, we can reach millions of Americans with a simple but life-changing message: Mental illness is nothing to be ashamed of, but bias and discrimination shame us all.

To acknowledge the importance of our children's health, the Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Monday, October 4, 1999, as Child Health Day. I call upon families, schools, communities, and governments to dedicate themselves to protecting the health and well-being of all our children.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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S. 380/P.L. 106–63

To reauthorize the Congressional Award Act. (Oct. 1, 1999; 113 Stat. 510)

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